KEY AND ELPHINSTONE'S

COMPENDIUM

OF

PRECEDENTS

IN

CONVEYANCING

TWELFTH EDITION,

VOL. 1, PART I.

BY

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PREFACE.

If the true meaning of "material" is "pertaining to matter and not to form," and if "materialise" bears a corresponding meaning, it was aptly said in the preface to the last edition of this work that changes in the law of real property had then recently materialised in the form of the Law of Property Act, 1922. Viewed from the proper angle, and in the right light, a dim outline of the scheme afterwards thrown into relief by the six consolidating enactments of 1925 was discernible through the mist of the 191 sections and 16 schedules contained in that Act.

Until the Consolidating Acts, preceded by the Law of Property (Amendment) Act, 1924, were passed in the summer of 1924, the task of remodelling the old common forms of conveyancing in accordance with the new law, and of devising and collating, with explanatory notes, and in any kind of logical sequence, precedents of the various instruments which in ever varying circumstances the practitioner is called upon to draft, was a task which could not be attempted with any prospect of success. In other words the work of revising, if that is the proper expression, Key and Elphinstone's Precedents in Conveyancing was not, until the consolidating bills were published somewhat earlier in the year, a practical or business proposition.

For failing under these circumstances to complete the work ready for publication on January 1st last, the editors do not feel called upon to make either excuse or apology.

Time alone will show what benefits will accrue from the Consolidating Acts to the class of landowners in general. The first results of the new Acts appear to tend in many

cases in the direction of increased expenditure rather than of economy.

It has been arranged, for the convenience of subscribers, to publish each of the two volumes in two parts.

As regards the arrangement of the present edition little need be said. The editors have endeavoured to follow, as far as possible, the method of arrangement followed in previous editions, in order that the habitual user of the work may not find himself groping through the less familiar parts of it as a stranger in a strange land.

As regards matter, the work must speak for itself. It is, however, hoped that the thought and labour expended upon it may serve to lighten the burden of those who may consult it.

The editors most gratefully acknowledge the kindness of Sir Benjamin Cherry in placing at their disposal the forward proofs of the first volume of his work on the Consolidating Acts.

The editors desire to express their thanks to Mr. W. F. Webster, of the Equity Bar, for his assistance in the revision of "Conditions of Sale"; to Mr. A. J. Spencer, also of the Equity Bar, for his assistance in the revision of "Conveyances on Sale"; and to Mr. Wilfrid Gutch, also of the Equity Bar, for his assistance in the revision of "Leases."

The editors also desire to express their thanks to Mr. A. H. M. Kempe, of the Equity Bar, for undertaking the indexes of both volumes, and to Mr. A. F. T. Maw for his assistance generally.

The editors are indebted to Mr. Henry Tees, clerk to Mr. F. Trentham Maw, for the Tables of Contents, Cases and Statutes, and for valuable assistance in taking this book through the press.

F. T. M.
H. W. R.

February, 1926.

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AGREEMENTS (*a*).

I.

AGREEMENT *with a* BUILDER *or* CONTRACTOR *for building a* HOUSE *or executing other* WORKS (*b*). *With variations.*

AN AGRMT [*or*, "Articles," *or* "Mem of Agrmt"] made the —— day of —— 19— betn A. of, &c. (hrinar called the contractor) of the one pt, & B. of, &c. (hrinar called the owner) of the other pt. [WHEREBY IT IS AGRD as follows] : (*c*) Parties.

(*a*) For references to various forms of agreement, see under the heading Agreement in the Index and in Vol. 2, under the headings Partnership and Patents. The Schedules to the Local and Personal Acts contain many forms of agreement which in special cases may be useful.

As to the stamps on agreements, see the Stamp Act, 1891, ss. 1, 22 and 23, and the First Schedule, heads AGREEMENT, BOND, COVENANT and GENERAL EXEMPTIONS FROM ALL STAMP DUTIES, and the several amendments to the Act noted in Alpe, 17th ed.

(*b*) As to building contracts generally, see Emden's Building Contracts. For other forms of building agreements *post*, pp. 13, 14.

(*c*) Where there are several parties to an agreement the proper form of introductory words will depend upon the manner in which they are to be bound respectively to its performance. The appropriate form may in each case be adapted from one or other of the forms of covenant given *post, sub tit.* "COVENANTS, FORMAL PARTS OF," substituting in the case of agreements not under seal, the word "agree" for "covt." Forms of commencement of agreements.

Where, for instance, there are several parties and the liability of each is to be confined to his own acts, the following words, negativing the construction of joint liability, should be substituted for those in the text: "Whby each & every of them the sd A., B., C., & D., [*or*, the sd respective pties hto] so far as relates to his own acts & defaults only [*or, if the obligation is not to be confined to purely personal acts* "so far as the agrmts hrinar contained are or ought to be observed or pformed by him, his exs or ads, but not further or orwise] hby [in conson of the agrmts hrinar

Agreement to execute works.

1. THE contractor shl at his own cost [take down & remove the house & bldgs, situate & being No. —— in

contained on the pt of the others or other of them] agrees with the others or other of them as follows : "

Where the agreement contains recitals the operative part will commence—"NOW IT IS HBY [COVENANTED &] agrd as follows" or as the case may require following the appropriate form of covenant, *post, sub tit.* "COVENANTS, FORMAL PARTS OF."

Mention of representatives, etc. unnecessary.

It is now unnecessary to mention either the personal representatives or successors in title of either party as persons on whose behalf or for whose benefit the contract is made.

As regards burden of contract.

The personal representatives of a sole contractor are by the common law bound by the deceased's contract although not specially named therein, Co. Litt. 209 a. Moreover, every contract under seal, unless a contrary intention is expressed, binds the real as well as the personal estate of the deceased contractor : L. P. Act, 1925, s. 80 (1) ; and any person beneficially interested in his estate and upon whom such interest has devolved stands now in the same position as regards personal liability for the debts of the deceased as the heir, though not named, or the devisee upon whom real estate had devolved would formerly have stood. See Administration of Estates Act, 1925, s. 32 (2).

As regards benefit of contract.

The benefit also of a contract which is enforceable at the contractor's death and the benefit of which survives to his estate, devolves upon his personal representatives, although not expressly named therein : Shep. Touchst., 481 ; Robbins & Maw., 4th ed., 115 ; and see *Ives* v. *Brown* [1919] 2 Ch. 214 ; *Lord Northbourne* v. *Johnston & Son*, [1922] 2 Ch. 309 ; but a contract may be of such a nature or so framed as not to survive for the benefit of the deceased's estate ; see *Formby* v. *Barker*, [1903] 2 Ch. 539 ; *Chambers* v. *Randall*, [1923] 1 Ch. 149 ; and the benefit or burden of a covenant may become annexed to or run with the land of the covenantee or covenantor and in that case will vest in or bind the persons who by virtue of any enactment affecting the devolution of the land or otherwise succeed to the title of the covenantee or the covenantor, as the case may be : L. P. Act, 1925, s. 80 (2) ; see *post*, p. 355, note. As to the framing of covenants intended to run with the land, see *post, sub tit.* "COVENANTS, FORMAL PARTS OF."

Covenants with several.

The benefit of a covenant with several persons jointly will devolve on the survivors ; and such a covenant made after 1925 will be construed as being made with each of them unless the contrary is expressed : L. P. Act, 1925, s. 81.

Form of contract where liability is undertaken for acts of others.

Where it is intended that one of the contracting parties shall render himself liable for the acts of his assigns or other persons not parties to the contract, he should contract that he or his assigns or such other persons will perform the contract ; it will not suffice for him to contract for himself or for himself and his assigns, etc., that he will perform it : see *Powell* v. *Hemsley*, [1909] 1 Ch. 680, and per Cozens-Hardy, M.R., s. c., [1909] 2 Ch. at p. 256.

Seal when necessary.

Sealing confers no advantage to either of the contracting parties on the death insolvent or bankruptcy of the other : see Administration of Estates Act, 1925, s. 34. As a general rule, however, contracts with corporations,

—— street, &c., &] erect, build, & completely finish in a good, substantial, & workmanlike mner [& with the best materials of their sevl kinds (*a*)], a house & other bldgs upon a piece of ground belongg to the owner, situate &c., & contg &c., *or*, " upon the site of the sd existg house & bldgs " accordg to the plans (*b*), elevons, & sections, & in accordce with the specificon of works & drawgs wch have been resply signed by the contractor & by C., the architect of the owner, *or*, " shl, at his own cost, exte & completely finish &c., the sevl works mentd in the

other than registered companies, must be by deed: *Kidderminster Corpn.* v. *Hardwick*, L. R. 9 Ex. 13; *Oxford Corpm.* v. *Crow*, [1893] 3 Ch. 535; *Hoare & Co.* v. *Lewisham Corpn.*, 87 L. T. 464; *Hoare* v. *Kingsbury U. D. C.*, [1912] 2 Ch. 452; *Baker* v. *Holme Cultram U. C.*, 85 L. J. K. B. 799; but this rule is subject to the exception stated in *Douglass* v. *Rhyl U. D. C.*, [1913] 2 Ch. at p. 414; see also *Faraday* v. *Tamworth Union*, 86 L. J. Ch. 436.

Parties to the contract.

As regards the enforcement of contracts by persons who are not parties or have given no consideration, there is a difference between contracts intended to operate *in personam* and contracts intended to operate *in rem*. It is a fundamental rule in regard to personal contracts that a right *in personam* cannot be conferred upon a person who is not a party to the contract, other than an undisclosed principal for whom the promisee named in the contract in fact contracted as agent; and that a contract not under seal cannot be enforced by a party to the contract who has given no consideration either to the promisor or to some other person at his request: *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.*, [1915] A. C. 847; and see *Brandt & Co.* v. *Morris & Co.*, [1917] 2 K. B. 784. As regards real contracts, on the other hand, it is provided by the L. P Act, 1925, s. 56 (1), re-enacting in extended form the repealed s. 5 of the Real Property Act 1846, that a person may take an immediate or other interest in land or other property or the benefit of any . . . covenant or agreement over or respecting land or other property, although he may not be named as a party to the conveyance or other instrument. See this section discussed, *post, sub tit.* "COVENANTS, FORMAL PARTS OF.

Registration.

As to the registration as land charges of certain obligations affecting land, see L. C. Act, 1925, ss. 10, 15; L. P. Act, 1925, s. 199, and *post*, pp. 526, 528,

Agreements supplemental to prior agreements.

Where an agreement varies the terms of, or is otherwise connected with, a previous instrument or several instruments, it may be convenient in order to avoid reciting the prior instrument or instruments to describe the latter one as supplemental, or intended to be read as annexed thereto (in lieu of being endorsed. Statutory effect is given to supplemental instruments by the L. P. Act, 1925, s. 58. See further, *post*, p. 88.

(*a*) Where the materials are to be supplied by the owner, substitute " but with materials to be supplied by the owner as hrinar mentd; " and add the provisions in notes (*c*) and (*d*), pp. 4, 5, in note (*f*), p. 5, and in note (*b*), p. 9.

(*b*) The plans prepared by an architect belong to his employer, see *Gibbon* v. *Pease*, [1905] 1 K. B. 810, but it is not unusual to contract that the architect may retain them.

specificon hrunto annexed, accdg to the plans &c.," & the contractor hby admits that the sd specificon, plans, & drawgs are sufft for their intd ppose, & that the works can be successfully exted in accordce thwith, witht any addonal or extra work other than such work as is necessarily implied thrin, or to be inferred thfrom upon a fair & liberal construction.

Works to be executed to satisfaction of architect.

2. The sd works shl be exted under the direction & to the satisfon in all respts of the sd C. or other the architect for the time being of the owner (hrinar called the architect), who shl have been appted to act for him for the ppose of this contract by writg under his hand produced to the contractor at his place of business.

Completion (*aa*).

3. The owner hby grts licence to the contractor to enter on the premes for the ppose only of pforming this contract, & the contractor shl forthwith commence the sd works & actively prosecute the same, & the sd works shl in all respts be completed [& the sd house & bldgs made fit for habiton & use] within —— calr months from the date of these psnts; Delay (*ab*). Provd that if any delay shl arise from fire, tempest, frost, or other inevitable cause (*a*), or accident, or from any strike or lock-out (*b*) in the bldg trade or any other trade or employmt, or by the default of the owner in payg in due course any moys payable to the contractor under this contract (*c*), then such

(*aa*) As to this clause, see *Porter* v. *Tottenham U. D. C.*, [1915] 1 K. B. 776.

(*ab*) A proviso of this nature does not cover a set of occurrences which would make the contract when resumed a really different contract from the contract when broken off: *Metropolitan Water Bd.* v. *Dick, Kerr & Co.*, [1918] A. C. 119, 130; and see *Woodfield Shipping Co.* v. *Thompson*, 36 T. L. R. 43; *Federal Steam Navigation Co.* v. *Dixon*, 64 Sol. J. 67.

(*a*) As to the application of the *ejusdem generis* doctrine to words such as these, see *Re Richardsons & Samuel*, [1898] 1 Q. B. 261; *Knutsford* v. *Tillmanns & Co.*, [1908] A. C. 406; *Thorman* v. *Dowgate*, [1910] 1 K. B. 410; *Aktieselskabet* v. *Namaqua Copper Co.*, 90 L. J. K. B. 36; *Herman* v. *Morris*, 35 T. L. R. 574; and as to what words will be sufficient to exclude that doctrine, see *Larsen* v. *Sylvester*, [1908] A. C. 295.

(*b*) As to the meaning of the word "strike" see *Farrer* v. *Close*, L. R. 4 Q. B. at p. 612; *Stephens* v. *Harris*, 57 L. J. Q. B. 203; and *cf. Williams Bros.* v. *Naamlooze*, 86 L. J. K. B. 334; of "lockout," *Re Richardsons & Samuel, supra*; and as to the meaning of *force majeure* sometimes included, see *Lebeaupin* v. *Crispin*, [1920] 2 K. B. 714, 719 *et seq.*, where the authorities are discussed; *Hackney Borough Council* v. *Doré*, [1922] 1 K. B. 431.

(*c*) "Or in supplying the materials for the sd works after notice in that behalf shl have been given by the contractor as hrinar mentd."

further time shl be allowed for the complon throf, as the architect shl in writg certify to be reasble.

Materials provided by contractor.

4. All materials to be used in the works, although the same may not be particularly mentd in the specificon (save as orwise provd by the sd specificon, & save as may be hrafter orwise required by the owner or the architect, by any writg under his hand), shl be supplied & furnished by the contractor (*d*).

Clearance of scaffolding, &c.

5. The contractor shl, on complon of the sd works, at his own expse, remove & clear away all scaffoldg, fencg, unused materials, & rubbish from the same, & leave the whole of the works & premes in a clean & pper state.

Payment (*e*).

6. The owner shl pay to the contractor the sum of £——, wch shl include the cost of labour, & of all materials (*f*), plant, & other things required for the pposes of the works, & of the convce or transport & removal throf to or from the

Alternative provisions.

Materials provided by owner.

(*d*) In the case mentioned in note (*a*), p. 3, substitute for the provision in the text the following: "All the old materials of the existg bldgs wch shl not be fit to be used in or about the sd works shl forthwith be removed by the contractor at his expse, & shl when so removed become his ppty, & all new materials to be used in or about the sd works shl be provd by the owner, & shl from time to time be delivered by him at his own expse at the place where the sd works are to be exted, as the sd materials shl be required by the contractor, reasble notice in that behalf being given by him to the owner: But all scaffoldg, tackle, tools, machinery, plant, & other things requisite or pper for the sd works, except the materials used thrin, shl be provd by & at the expse of the contractor: The sd works shl be exted with the sd old materials so far as the same shl be fit for the ppose, & with the new materials to be supplied as afsd by the owner to the contractor, who shl be acctable for the same, & shl be charged for all materials wch shl be certified by the architect to be fit for use, but not to have been used in or about the sd works, a reasble allowce being made for waste, & the amt so to be charged shl also be fixed by the architect, & shl be pd by the contractor to the owner."

(*e*) If the landowner dies before payment, his devisee is entitled to have the payment made out of personal estate. See *Re Day*, [1898] 2 Ch. 510. As to the liability of the builder to pay the charges of the quantity-surveyor, see *North* v. *Bassett*, [1892] 1 Q. B. 333.

(*f*) "Except such as are hby agrd to be supplied by the owner.'

works, in mner followg, that is to say, the sum of £——, upon the prodon to the owner of the certfe (*g*) of the architect that work to the value of £—— has been duly exted to his satisfon by the contractor, the further sum of £—— upon the prodon of the like certfe that work to the value of £—— has been so exted (*h*), & the remr of the sd sum of £—— upon the prodon to the owner of the certfe of the architect that the sd works have been in all respts completed [& the sd house & bldgs made fit for habitation & use] in accordce with this contract, & to his satisfon, [*or*, "in sums amtg to £90 p.c. on the value of the works as the same shl proceed, & not being less than £—— at each paymt, wch percentage shl be ascertained by the architect, & shl be pd upon his certfe of the same being produced to the owner, & the remr of the sd sum of £——, *&c., as above;*" *or*, "THE sum to be pd by the owner to the contractor for the sd works shl be ascertained accordg to the rates specified in the schdle of prices annexed to the sd specificon, so far as the prices are there specified, wch prices shl include the cost of labour, *&c., as above* (save as orwise provd by the sd specificon or schdle of prices), & the paymt for any work not included in the sd schdle of prices shl be fixed by the architect: WEEKLY paymts on acct shl be made by the owner to the contractor upon the certfes of the architect of the contract value of the work exted, subjt tc a deduction of 10 p.c. upon such value, wch shl be retained by the owner until the complon of the work, & shl be pd to the contractor upon the certfe of the architect of the works havg been completed, & of the balance remaing due to the contractor." (*aa*)]

(*g*) As to the builder's position where the certificate is negligently withheld, see Emden, 4th ed., 105; and as to the legal effect of the certificate, see *ib.* 96 *et seq.*

Where payment of last instalment is to be delayed.

(*h*) Occasionally the payment of the last instalment is delayed for a year so as to allow of defects being discovered. In this case say, "And the remr of the sd sum of £—— one yr after the prodon to the owner of the certfe," *&c., as in text.* "In case the architect shl within the sd yr certify that any work [or materials] are defective, the same shl forthwith be made good by the contractor at his own expse, or on his default by the owner at the expse of the contractor."

(*aa*) See *McMahon* v. *O'Neill*, [1915] 2 Ir. R. 384, where moneys retained by the owner under a clause of this kind were assigned by the contractor.

7. The architect shl not give his certfe in respt of any work wch is in any respt defective or not accdg to contract or orwise not done to his reasble satisfon, or while the contractor is not using due diligence in the prosecution of the works, or is orwise makg default in the pformce of this contract. Withholding certificate (*a*).

8. The owner [or the architect] may at any time durg the progress of the works by order in writg under his hand, make or cause to be made any alterons in the sd origl specificon & plans by way of addon or omission, or orwise deviatg thfrom ; & the sd works shl be exted accdg to the sd alterons or devions under the diron & to the satisfon of the architect in the same mner as if the same had been included in the sd origl specificon & plans ; & any work or materials wch shl so be ordered not to be done or used shl be omitted or shl not be used by the contractor. Deviations and extra work (*b*).

9. All addons & deductions to be made to or from the amt of the contract price in respt of any such alteron or deviation from the sd specificon or plans as afsd shl be [ascertained accordg to the rates specified in the schdle of prices annexed to the sd specificon, & in case the rates are not thrin specified, shl be] fixed by the architect ; and the difference of expse occasioned by any such alteron or deviation shl be added or deducted (as the case may be), to or from the contract price. But no paymt or allowce whatever shl be made to the contractor for any extra work or materials done or used by him witht a previous order or authority in writg from the owner (*d*) ; & any alteron or deviation ordered or authorised as afsd shl not in anywise alter the total contract Payment for deviations and extra work (*c*).

(*a*) As to the power of the Court on the bankruptcy of the contractor to order a certificate to be given, see *Ex p. Gray*, 58 L. J. Q. B. 5.

(*b*) As to this clause, see *R.* v. *Peto*, 1 Y. & J. 37 ; *Cooper* v. *Langdon*, 9 M. & W. 60 ; *Steel* v. *Young*, [1907] S. C. 360 ; but see *Forrest* v. *Scottish Investment Co.*, [1915] S. C. 115.

(*c*) As to this clause, see *Tharsis Sulphur & Copper Co.* v. *McElroy*, 3 App. Cas. 1040 ; *Richards* v. *May*, 10 Q. B. D. 400.

(*d*) See *Brunsdon* v. *Staines*, 1 Cab. & El. 272 ; *Molloy* v. *Liebe*, 102 L. T. 616. Such an order is a condition precedent to any claim by the contractor in respect of extra work, unless there is an arbitration clause covering the question as to what is extra work, in which case the award of the arbitrator that the matters in question are extras will take the place of the order in writing : *Brodie* v. *Cardiff Corporation*, [1919] A. C. 337. The words "or the architect" are sometimes inserted here, but they are highly dangerous, as they enable the architect to increase the cost of the works without the sanction of the owner. Sometimes it is provided that the architect may authorise alterations not causing more than a certain addition to the contract price.

price to be pd to the contractor, except so far as the same shl alter the amt of labour or the value of the materials wch may be required to be used in or about the works, nor shl alter the mode in wch the contract price is to be pd, or in wch the value of the work done is to be ascertained with a view to the paymt throf. And the contractor shl not by reason of any such addon to or alteron in the works as afsd be allowed any further time for completg the same, except such further time (if any) as the architect shl in writg certify to be reasble (*e*).

Power to deduct money owing by contractor (*f*).

10. The owner shl be entitled to deduct any moys wch the contractor shl be liable to pay to the owner, under this contract or orwise, from any sum wch may become payable to the contractor hrunder: & the architect in makg his certfes as afsd shl have regard to any sums so chargeable against the contractor: Provd always, that this provon shl not affect any other remedy by action at law, or orwise, to wch the owner may be entitled for the recovery of any such moys.

Penalties for delay (*g*).

11. In case the sd works shl not in all respts be completed [& the sd house & bldgs made fit for habiton & use] [& all scaffoldg, fencg, unused materials & rubbish cleared away] on or bfe the —— day of ——, or within such extended time as shl be allowed for that ppose, as hrinbfe mentd, & the architect shl certify in writg the fact of such non-complon or non-removal, then the contractor shl pay to the owner, as liquidated & ascertained damages for such default, & not as a penalty, the sum of £—— for every subseqt week, & so in proportion for any pt of a week, until the complon of the sd works, & the removal of all scaffoldg, fencg, unused materials & rubbish, such complon & removal to be certified in writg by the architect.

Materials, &c., to be property of employer (*a*).

12. All materials wch may from time to time durg the progress of the works be in, upon, or about the premes for use

(*e*) Unless a clause to this effect is inserted, no penalty can be recovered for delay if additional works are ordered; *Dodd* v. *Churton*, [1897] 1 Q. B. 562.

(*f*) As to the right of set-off in the absence of express contract, see *Young* v. *Kitchin*, 3 Ex. D. 127; *Newfoundland Govt.* v. *Newfoundland Rly. Co.*, 13 App. Cas. 199; discussed in *Stoddart* v. *Union Trust, Ltd.*, [1912] 1 K. B. 181; 28 L. Q. R. 184.

(*g*) This provision is effectual, see *Law* v. *Redditch Local Board*, [1892] 1 Q. B. 127; provided that the contractor has himself completed the contract: see *British, etc., Co.* v. *General Accident, etc. Corporation*, [1913] A. C. 143.

As to bank-

(*a*) Although a provision for forfeiture of the building materials to the

in the sd works (except such (if any) as may be rejected by the architect as not being in accordance with the specificon), shl be deemed to be the absolute ppty of the owner, &, save as regards any surplus materials remaing over after complon of the sd works in accordce with this contract, shl be used solely for the pposes of the sd works, and shl not be removed without the consent or authority of the architect; but the contractor shl nevertheless be solely responsible for the loss or destron throf, & for all damage wch may happen thereto by fire, tempest, or any other cause whatsr, & the contractor shl likewise be liable to make good all damage wch may happen to the sd works from any cause whatever durg the progress throf (*b*).

Damage to works.

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owner on the bankruptcy of the contractor would be void as a violation of the policy of the bankruptcy law within the principle of *Higinbotham* v. *Holme*, 19 Ves. 88, that a man cannot validly contract that his property shall go over on his bankruptcy so as to be taken away from his creditors: *Ex p. Jay*, 14 Ch. D. 19; *Ex p. Barter*, 26 Ch. D. 510; the clause in the text, having no reference to bankruptcy, is free from this objection: *Brown* v. *Bateman*, L. R. 2 C. P. 272; *Re Waugh*, 4 Ch. D. 524; and is not touched by the Bills of Sale Acts: *Reeves* v. *Barlow*, 12 Q. B. D. 436; see 36 Sol. J. 751; *Morris* v. *Delobbel Flipo*, [1892] 2 Ch. 352; and is preferable to a mere licence to seize the materials on the default of the builder, although this would not be within the Bills of Sale Acts, *Ex p. Newitt*, 16 Ch. D. 522, and would prevail against the trustee in bankruptcy: *Re Keen & Keen*, [1902] 1 K. B. 555; but not against the sheriff after seizure under a *fi. fa.*: *Byford* v. *Russell*, [1907] 2 K. B. 522. The effect of this clause, standing alone, is to vest the property in the materials when brought on the land in the owner, subject to a condition that the contractor shall be at liberty to remove surplus materials on completion, *Hart* v. *Porthgain Harbour Co., Ltd.*, [1903] 1 Ch. 690; and although in connection with other conditions, it may bear a different construction, it has not the effect of bringing the materials within the reputed ownership clause of the Bankruptcy Act: *Re Keen & Keen, sup.* A mere building agreement differs in this respect from an agreement for a building lease under which the land-owner becomes at once the "true owner" of the materials and by the same instrument consents to their remaining in the possession of the builder as if the latter were the "true owner," *e.g.* where the builder becomes tenant at will under the agreement: see *Re Weibking*, [1902] 1 K. B. 713. The clause is sometimes extended to the contractor's plant, but this being contrary to the intention of the contract is wrong; and clause 15 should be relied on as to this.

ruptcy or default of contractor.

(*b*) Where the materials are to be supplied by the owner substitute for this clause, "The contractor shl be solely responsible for the loss or destron of all materials, old or new, wch may from time to time durg the progress of the works be in, upon, or about the premes for use in the sd works, & for all damage, &c."

Contract not to be assigned (*c*).

13. The contractor shl psonally superintend the exon of the works, & shl not assn [or sublet] this contract, or any pt throf, witht the express licence & approval in writg of the owner.

Foreman and clerk of works.

14. A foreman appointed & pd by the contractor shl be constantly on the works & all directions given to him by the architect shl be deemed to have been given to the contractor. The clerk of the works shl be appointed & pd by the owner & shl at all times be allowed to inspect the works & materials on behalf of the architect & subjt to an appeal to the architect no materials to wch the sd clerk shl object shl be used.

Power in case of delay or bad work to take works out of contractor's hands (*a*).

15. In case at any time durg the progress of the works any unnecy delay shl occur in the carryg on of the same through the default of the contractor (*d*) [& such delay shl be certified in writg by the architect], & the owner, or the architect, shl give a written notice to the contractor to proceed with the sd works, or leave the same at his then or last known

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As to assignment by contractor.

(*c*) This would not of course interfere with an assignment by the contractor of moneys to become due to him under the contract, subject to the owner's rights under clauses 10 and 15. As to the effect of an assignment by way of mortgage or otherwise of such moneys (whether actually earned or not), as between the particular assignee and the trustee under a subsequent bankruptcy or liquidation of the contractor, see *Tooth* v. *Hallett*, L. R. 4 Ch. 242 (where the claim of the trustee was preferred; but the case turned or is distinguishable on the ground that, the contractor being in default, the buildings were completed by the trustee with his own moneys, so that the case was the same as if the work had been taken out of the contractor's hands under the forfeiture clause): *Ex p. Nichols*, 22 Ch. D. 782, distinguished in *Ex p. Moss*, 14 Q. B. D. 310; *Drew* v. *Josolyne*, 18 Q. B. D. 590; see Emden, 157. As to the effect of such an assignment upon subsequent dealings between the owner and the contractor, see *Brice* v. *Bannister*, 3 Q. B. D. 569.

As to whether under a sub-contract for special work the contractor becomes the principal, or merely the agent of the building owner and as such entitled to pledge his credit, see *Hampton* v. *Glamorgan C. C.*, [1917] A. C. 13, and cases there cited; and cf. *Ramsden* v. *Chessum*, 110 L. T. 274.

Death of contractor.

The contract of a builder is not a personal contract, and, therefore, on his death his personal representatives may carry it out: *Marshall* v. *Broadhurst*, 1 Cr. & J. 403; but that of the architect appears to be personal, see Emden, 74.

(*d*) Where a contractor has been guilty of unnecessary delay, the fact that the continuance of the work subsequently becomes legally impossible as a result of such delay does not relieve the contractor from liability in damages: *Mertens* v. *Home Freeholds Co.*, [1921] 2 K. B. 526.

As to bankruptcy.

(*a*) See *Lodder* v. *Slowey*, [1904] A. C. 442. It has been usual to extend this clause to the case of the contractor becoming bankrupt, &c., but such a provision has been decided to be void as operating to deprive the trustee in bankruptcy of rights which he would otherwise have had in respect of the bankrupt's property, and being therefore opposed to the policy of the

place of abode or business, & the contractor shl not proceed with the sd works to the satisfon of the architect within —— days after such notice shl have been so given, or left, or in case the contractor shl at any time neglect or omit to pull down or remove any work or materials wch the architect shl have certified in writg to be defective, or not accdg to contract, within —— days after written notice so to do shl have been given to him or left on the works by the owner or the architect, or left as afsd, or within such further time as may be specified in such notice, or in case the contractor shl assn [or sublet] this contract or any pt throf witht licence: THEN & in any such case the owner shl be at liberty, witht avoidg this contract, to recover posson of the sd premes or any part thereof, and to take the sd works wholly or partially out of the hands of the contractor, & to employ any other pson or psons to exte the same, & for that ppose to retain posson of, & use all materials & to take posson of, & use all scaffoldg, plant, tools, implemts, & things on or about the sd works; & all expses & damages thby incurred (*b*) shl be ascertained & certified by the architect, & shl be pd by the contractor to the owner.

Certificates of architect (*c*).

16. THE certfe, or decision in writg, of the architect upon any mre as to wch he is hby required or authorised to certify or decide, shl be final & bindg upon both pties, except that the architect may by any certfe make any correction or modificon in any previous certfe wch shl have been made by himself, or by any predecessor in his office [except that the certfe shl not be conclusive as to the sufficiency of any work or materials to

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bankrupt law according to the principle noticed, *ante*, p. 8, note (*a*), and would also deprive the trustee of his option to elect to complete the contract for the benefit of the creditors: *Ex p. Barter*, 26 Ch. D. 510, and is therefore here omitted. As to the right of the trustee in bankruptcy to disclaim onerous contracts, see Bankruptcy Act, 1914, s. 54. If the builder abandons his contract uncompleted, he has no claim on a *quantum meruit* when there is no evidence of a fresh contract in respect of the work done; *Sumpter* v. *Hedges*, [1898] 1 Q. B. 673; and see *Dakin & Co.* v. *Lee*, [1916] 1 K. B. 566, where the rules of law governing such a claim are discussed: and cf. *Small* v. *Middlesex Real Estates*, [1921] W. N. 245.

(*b*) As to the measure of damages in such a case, see *Mertens* v. *Home Freeholds Co.*, [1921] 2 K. B. 256.

(*c*) The architect is not liable for negligence only: *Chambers* v. *Goldthorpe*, [1901] 1 K. B. 624; *Chichester Corpn.* v. *Foster*, [1906] 1 K. B. 167. It is his duty to act judicially: see *Hickman & Co.* v. *Roberts*, [1913] A. C. 229; *Bristol Corpn.* v. *Aird & Co.*, [1913] A. C. 241.

wch it relates & shl not relieve the contractor from the liability to make good any defective work or material] (*c*).

Conformity to building Acts (*d*).

17. The contractor shl conform in all respts to the provons & regulons of any genl or local Act of Parliament, or of any local authority wch may be applicable to the sd works, & indemnify the owner against all penalties incurred by reason of the non-observce of any such provons or regulons.

Damage to highway (*e*).

18. The contractor shl indemnify the owner against all actions or proceedings wch may be brought or taken against the owner in respt of damages caused to a highway by the contractor in the pformce of this contract.

Interference with lights.

[**19.** The owner shl indemnify the contractor against all actions & proceedings on the pt of any pson havg or claimg ancient lights, on acct of any actual or alleged or apprehended interferce of the sd bldgs & works thwith.]

Arbitration (*f*).

20. [*Arbitron Clause. See* Arbitron] *saying if the words*

(*c*) See *Robins* v. *Goddard*, [1905] 1 K. B. 294; *Kinlen* v *Ennis U. C.*, [1916] 2 Ir. R. 299; *Eaglesham* v. *McMaster*, [1920] 2 K. B. 169.

(*d*) See *post, sub tit.* "Leases."

(*e*) As to the liability of the person "by or in consequence of whose order" such damages are caused, see the Locomotives Act, 1898, s. 12, amending the Highways, &c., Act, 1878, s. 23; *Epsom U. D. C.* v. *L. C. C.*, [1900] 2 Q. B. 751; *Egham R. D. C.* v. *Gordon*, [1902] 2 K. B. 120; *Windlesham U. D. C.* v. *Seward*, 11 L. G. R. 324. As to what is "extraordinary traffic," resulting in such liability, see *Hill* v. *Thomas*, [1893] 2 Q. B. 333; *Barnsley, etc., Society* v. *Worsborough U. C.*, [1916] A. C. 291; *Londonderry C. C.* v. *MacCarthur*, [1917] 2 Ir. R. 49; *Abingdon R. C.* v. *Oxford Electric Tramways*, [1917] 2 K. B. 318, 322; *Ripon R. C.* v. *Armitage*, [1919] 1 K. B. 559; *Butt & Co.* v. *Weston-Super-Mare U. C.*, [1922] 1 A. C. 340. As to the time limited by the last-mentioned Act for the commencement of proceedings by the highway authority for the recovery of expenses, see *Lancaster R. D. C.* v. *Fisher*, [1907] 2 K. B. 516; *Carlisle R. D. C.* v. *Carlisle Corpn.*, [1909] 1 K. B. 471; *Reigate R. D. C.* v. *Sutton District Water Co.*, 78 L. J. K. B. 315; and in the case of damage done by a public authority, see the Public Authorities' Protection Act, 1893, s. 1; *Kent C. C.* v. *Folkestone Corpn.*, [1905] 1 K. B. 620.

(*f*) The expediency of inserting an arbitration clause may be doubtful unless it be a clause making the decision of the architect or surveyor conclusive. Such a provision, though very stringent, is not uncommon, and is enforceable except under the special circumstances explained by Lindley, L.J., in *Ives* v. *Willans*, [1894] 2 Ch., at p. 488, and subject to the discretion of the Court to refuse to stay proceedings under s. 4 of the Arbitration Act, 1889; see *Freeman & Sons* v. *Chester R. D. C.*, [1911] 1. K B. 783; *Parker, Gaines & Co.* v. *Turpin*, [1918] 1 K. B. 358, and *post*, p. 171, note. See also *Tullis* v. *Jacson*, [1892] 3 Ch. 441; *Kinlen* v. *Ennis U. C.* (*supra*); and *Eaglesham* v. *McMaster* (*supra*), where, in addition to the architect being made sole arbitrator, it was provided that the certificate

in brackets in clause **16** *are inserted* " and the arbitror shl have power to open and revise any certfe."

In WITNESS whrof the sd pties have hrunto set their respective hands the day & yr first above written, *or*, " As WITNESS the hands of the sd pties."

Signed by the above-named ——, in the presence of, *or*, " Witness to the signature of the above-named ——."

II.

AGREEMENT *with a* BUILDER *or* CONTRACTOR.

Short Form (*a*).

PARTIES, as in last Precedent.

Agreement to execute works.

1. THE contractor shl forthwith commence & bfe the expiron of —— weeks from this date in all respts complete with the best materials in the best workmanlike mner & to the satisfon of the owner all the works & things mentd or referred to in the parlars or specificon hrunto annexed in & upon the house & premes thrin mentd.

To remove plant on completion.

2. THE contractor shl within one week from the complon of the sd works & things remove all his scaffoldg, plant, & materials from the premes.

Payment.

3. THE owner shl pay to the contractor the sum of £—— for the sd works & things.

Penalties for delay.

4. IF from any cause whatever the sd works [includg any addonal works so directed as hrinar mentd (*b*),] & things shl not be completely finished, & the sd scaffoldg, plant, & materials removed within the time & in mner afsd, then the owner may deduct from any moys then or thrafter due or

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of the architect should be a condition precedent to the contractor's right of action against the employer. As to possible bias owing to position of arbitrator, see *Eckersley* v. *Mersey, &c., Board*, [1894] 2 Q. B. 667; *Bright* v. *River Plate, &c., Co.*, [1900] 2 Ch. 835; *Hickman & Co.* v. *Roberts*, [1913] A. C. 229; *Bristol Corpn.* v. *Aird & Co.*, [1913] A. C. 241; *Hogg* v. *Belfast Corpn.*, [1919] 2 Ir. R. 305.

(*a*) This form may suffice for small transactions, but is less protective to the owner than the last precedent.

(*b*) See *ante*, p. 7, note (*d*); and clause 9 of this precedent.

payable to the contractor the sum of £—— per day for every day after the expiron of —— weeks from this date until such complon & removal shl be effected, as & for liquidated damages.

Payment of penalties.

5. If there shl not be sufft moy due to the contractor to make such deduction, then the excess shl be pd by the contractor to the owner.

On default of contractor, owner may employ other workmen.

6. In the event of such default the owner may employ & pay other workmen to finish the sd works, & may use any scaffoldg, plant, & materials on the premes belongg to the contractor for such ppose, & shd he pay, or be liable to pay, a larger sum for finishg such works than the amt he wd be indebted for to the contractor, then the excess shl be pd to him by the contractor.

Owner may require omission of works.

7. The owner may, if he thinks fit, require the omission of any of the sd works, & in that case a proportionate sum shl be deducted.

Contract to include incidental work.

8. All work rendered necy in consequence of the doing of the works hby agrd upon shl be deemed to be included in & form pt of this contract, although not mentd in the specificon, & no addonal paymt shl be made to the contractor for the same.

Additional works only upon written order.

9. No addonal works shl be done by the contractor except upon the previous order in writg of the owner agreeing to pay for the same, & shd the same be done witht such order the contractor shl not be entitled to any addonal paymt for the same.

Contractor to make good defects.

10. The contractor shl as well after as bfe he shl have been pd for the sd works & things, & witht any further paymt, for a period of one yr after complon make good any defects whatever in such works & things, & especially in the roofs or drainage of the premes, & the owner may retain a sum not exceedg £10 p.c. of the total contract price, until the expiron of such period as a secy for the pformce by the contractor of this stipulon.

As witness, &c.

III.

AGREEMENT *with a* Builder *or* Contractor. *A very Short Form, where the Terms are embodied in the Specification.*

Parties, as in Precedent I.

Agreement by contractor.

1. The contractor shl exte, maintain, & do the sevl works & things mentd & described in the specificon or parlars hrunto annexed & signed by the contractor & by ——, the

architect [surveyor] of the owner, & the plans & drawings referred to in such specificon or parlars, in & upon the premes thrin mentd within the time or times & in conson of the paymts to be made to him by the owner as thrin mentd, & shl in all respts be bound by, pform, observe, & fulfil all the condons, stipulons, & provons thrin contained & wch are expressed or intended to be bindg on & to be pformed, observed, or fulfilled by the contractor.

Agreement by owner.

2. In conson of the premes the owner shl make to the contractor the paymts mentd in the sd specificon or parlars at the respective times & in the mner thrin mentd, subjt to the deductions, retentions, & abatemts (if any) to be made thfrom as thrin expressed, & shl *continue as in clause* **1** *saying* "owner" *for* "contractor."

As witness, &c.

IV.

CONTRACT *between a* firm *of* Shipbuilders *and a* Steamship Company *for building* Steamers. Variations *where the contract is under* Seal (*a*).

Parties.

Agrmt [under seal] made, &c., between A. & Co., of, &c. (*b*), (hrinar called the builders), of the one pt, & the

(*a*) The benefit of this contract is assignable by the company: *Earle, &c.* v. *Atlantic Transport*, 43 Sol. J. 691; and see generally as to the assignability of contracts in equity, *Tolhurst* v. *Associated Portland, &c., Ltd.*, [1903] A. C. 414, considered in *Sorrentino* v. *Buerger*, [1915] 1 K. B. 307, 314; distinguished in *Kemp* v. *Baerselman*, [1906] 2 K. B. 604; *Cooper* v. *Micklefield Coal, &c., Co.*, 107 L. T. 457.

As to mode in which firms contract.

(*b*) Persons who have entered into partnership with one another are called collectively a firm; and the name under which their business is carried on is called the firm name: P. Act, 1890, s. 4. A firm name is used therefore to denote the persons who constitute the firm at the time the name is used: Lindley, 8th ed., 138; and partners may execute and be made parties to a contract or other legal instrument in their firm name: *Wray* v. *Wray*, [1905] 2 Ch. 349; P. Act, 1890, s. 6.

The contract of a firm is the joint contract of the partners of the firm: P. Act, 1890, s. 9, and see *Kendall* v. *Hamilton*, 4 App. Cas. 504, and Lindley, 8th ed., 237, 238; cf. *Isaacs & Sons* v. *Salbstein*, [1916] 2 K. B. 139; and a contract intended to bind the partners as a firm is appropriately entered into in the firm name as in the above precedent. Where

—— Co., Ltd. (*c*), whose registered office is situate at —— (hrinar called the pchasers), of the other pt.

Agreement to build vessels.

1. The builders (provd the pchasers shl duly make to them the sevl paymts at the sevl times & in mner hrinar set forth) will build & complete for the pchasers, of the best & most substantial materials & workmanship, two vessels & engines, with outfit & appurtenances, of the followg class, dimensions, & power, viz.: Class A 90 in Lloyd's Registry, dimensions,

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however, the contract is intended to be binding upon the partners jointly and severally, the parties are more properly described as in Prec. VI., *post*, p. 28, although no doubt a contract in which the only description of the parties is by their firm name may be so expressed as to be binding severally upon each partner.

Care must be taken that a contract intended to be binding only upon the partners as a firm is executed in the proper manner. Each partner is the agent of the firm and of the other partners: P. Act, 1890, s. 5, Lindley, 8th ed., 155. Consequently a contract expressed to be made in the name of the firm, is none the less the contract of the firm because it is executed by one or all of the partners respectively in their own names. But a contract signed in the firm name and signed also by each of the partners in his own name may be held to imply a joint and several liability on the part of each partner: see *Ex p. Harding*, 12 Ch. D. 557.

Registration of names.

By the Registration of Business Names Act, 1916, s. 8 (1), contracts entered into by a firm cannot be enforced by the firm by proceedings either in the business name or otherwise during the time of default in furnishing the particulars required by s. 3 (1), unless the Court grants relief. It appears, however, that the operation of s. 8 (1), is limited to prohibiting the enforcement of contracts, coming within its scope, as between the immediate parties thereto: *Daniel* v. *Rogers*, [1918] 2 K. B. 228; and as the Act allows fourteen days for registration, a contract made during that time is enforceable, although registration does not take place: *Re A Debtor* (No. 5), 89 L. J. K. B. 40. See further Vol. 2 under the heading Partnership.

As to mode in which companies contract.

(*c*) As to the mode in which registered companies contract, see Companies C. Act, 1908, s. 72. Where an agreement to which a company is a party, which, as in the case of the above precedent, does not require to be by deed, but would be sufficient if in writing, signed on behalf of the company by any person authorised in that behalf, is in fact executed by the company under its common seal, it is believed to be usual to make it under seal as to the other parties also. Whether the affixing of the company's seal would make the instrument chargeable with stamp duty as a deed if the other parties execute under hand only, seems doubtful, but the practice is to stamp it as a deed: see 46 Sol. J. 522. Where a deed is not essential, it will suffice if the agreement is signed by an authorised agent of the company (usually the directors or managing director of the company): see *Chapman* v. *Smethurst*, [1909] 1 K. B. 927, and see the L. P. Act, 1925, s. 74 (2), empowering the board of directors, council or other governing body of a corporation aggregate to appoint an agent for this purpose. There can now rarely, if ever, be any advantage, except with reference to the Statute of Limitations, in employing a deed where an agreement under hand only is by law sufficient.

length —— ft., breadth inside —— ft., depth from top to keel —— ft., & havg cylinders of —— & —— inches, & —— stroke, & a workg pressure of —— lbs. to the square inch, & in all other respts accordg to the specificons & plans signed by the builders & the pchasers' engineer.

Time for completion (*d*).

2. The builders shl build the sd vessels under the superintendce & to the reasble satisfon of an engineer or surveyor for the time being appted by the pchasers, & (provd the paymts afsd are duly made) shl launch the sd vessels & make the same in all respts fit & ready for their trial trips on or bfe the —— day of —— , & shl forthwith thrafter complete the sd vessels & make the same ready for delivery afloat to the pchasers or their duly authorised agent in a usual & convenient place, in river or dock, on or bfe the —— day of ——, & in case of default for every week's delay beyond the last-mentd date the builders shl pay to the pchasers the sum of £——, as liquidated & ascertained damages, & not as a penalty (*a*), & so on in like proportion for any period less than a week, & such amt may, at the option of the pchasers, be deducted from the pchase-moy.

Penalties for delay.

Works may be inspected on behalf of purchasers.

3. Any of the directors of the pchasers or their engineer or surveyor or any other pson authorised in that behalf by writg under the hand of their secretary may, durg the bldg of the sd vessels & on the trial throf, at all reasble times visit & inspect the same, and examine the state & progress of the sd vessels & the workmanship throf, & the materials used & intended to be used in the constron throf, & may by all pper means test & prove the quality & sufficiency of the work & materials throf, & the sd engineer or surveyor may reject any work or material wch may be inconsistent with the sd specificons or orwise not accordg to contract, & require the same to be removed, replaced, or altered at the expse of the builders.

Purchase money to be paid by instalments (*b*).

4. The pchasers shl pay to the builders as the pchase-moy for each vessel the sum of £——, by five equal instalmts of

(*d*) As to the effect of a provision that the contract shall become void if the builders are unable to deliver within a fixed time, see *New Zealand Shipping Co.* v. *Société des Ateliers*, [1919] A. C. 1.

(*a*) This provision is effectual: see *Clydebank, &c., Co.* v. *Don Jose, &c.*, [1905] A. C. 6.

(*b*) The builders' claim, arising upon default in payment of each instalment as it becomes due, is a "liquidated demand in money" within the meaning of R. S. C. Ord. III. r. 6, and not merely a claim for damages: *Workman, Clark & Co.* v. *Lloyd Brazileno*, [1908] 1 K. B. 968.

£—— each, to be pd in cash [by acceptces of the pchasers at six months' date], namely, one-fifth when the keel has been laid, one-fifth when the ship is in frame, one-fifth when the ship is plated, the boiler shells riveted, the furnaces put togr, & the cylinders for the engines cast & bored, one-fifth when the ship is launched & the machinery ready to go on board, & the remaining fifth when the ship is completed & ready for delivery after a satisfactory trial. [The sd respective instalmts shl be pd ten days after the builders shl procure & produce to the pchasers at their office in —— the certfe in writg of the sd engineer or surveyor that such instalmts are resply due & payable: Provd that in case the sd engineer or surveyor shl at any time neglect or refuse witht reasble cause to give to the builders his certfe in writg that any instalmt is due & payable, when such instalmt is in fact due & payable, the matter in dispute shl be referred to arbitron as hrinar provd].

Vessels during building to be the property of purchasers.

5. From & after the paymt of the first instalmt of the pchasemoy the vessels & all their engines, boilers & machinery, & all materials from time to time then built into the sd vessels or either of them or their respive engines, boilers or machinery, shl(*c*) thenceforth become & remain the absolute ppty (*d*) of the

(*c*) It is not an uncommon practice, in place of the clause in the text, to insert a clause to the effect that the ship, engines, and materials shall during construction stand as a security to the purchaser, or be subject to a lien in his favour for the amount of instalments paid by him. Such a clause, it is conceived (notwithstanding the decision in *Ex p. Hodgkin*, L. R. 20 Eq. 746, which turns on the fact that the mortgagee had entered into possession), falls directly within the words added to the definition of a bill of sale by the Bills of Sale Act, 1878, and is void as a bill of sale, although the ship, when completed, falls within the exception in s. 4 : see *Gapp* v. *Bond*, 19 Q. B. D. 200. If the clause in the text is inserted, the following may be added ; as to which, see *Wood* v. *Bell*, 6 El. & Bl. 355 :—

Additional clause.

" Immedly upon the paymt of the first instalmt of the pchase moy the builders shl affix the name of the pchasers upon the vessels in a conspicuous place & mner, & shl not remove the same witht their consent."

(*d*) The provisions contained in the preceding clause of this agreement are in themselves sufficient to raise the presumption that upon due payment by the purchasers of the first instalment the property in the vessels and in all subsequent additions thereto as they are made will pass to the purchasers, but it may be rebutted by other words in the contract, see *Laing & Sons, Ltd.* v. *Barclay, Curle & Co., Ltd.*, [1908] A. C. 35.

As the contract is for the sale of a complete ship, the words, sometimes inserted in the contract, purporting to pass the property in materials appropriated or intended for, but not built into or affixed to the ship, are

pchasers, subjt only to the lien of the builders for any unpaid pchase moy (*e*).

Power to purchasers to complete works on default of builders (*a*).

6. In the event of the builders makg default in the prosecon of the constron of the vessels, engines, boilers, & machinery, or makg default in the delivery of either vessel by the date stipulated, it shl be competent for (but not incumbent upon) the pchasers to take posson of the vessels in their then state, & all materials intended for them as afsd, & to complete the vessels, engines, boilers, & machinery, with power for this ppose to enter into any contract with other builders, & to use the yard, workshops, machinery, & tools of the builders witht makg any paymt or allowce for such use, & the cost incurred by the pchasers in the exercise of any of the powers of this clause shl be deducted from the pchase-moy then unpd, if sufft, & if the same is not sufft shl be made good & pd by the builders. Any exercise of the powers of this clause shl be witht prejudice to any claim for delay under clause **2** hrof.

Insurance (*aa*)

7. The vessels & machinery shl be at the risk in all respects of the builders until delivered to the pchasers, & until such delivery the builders shl, at their own cost, keep the same, or such pts throf as shl from time to time be constructed & in their posson, insured against loss or damage by fire in one or more first-class office or offices [to be approved by the pchasers in the joint names of the builders & the pchasers] in an amt exceedg by £—— for each vessel the pchase-moy then pd for the same, and shl deposit the policies for such insurces with the pchasers [& if the builders shl neglect to insure the sd

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ineffectual: *Seath* v. *Moore*, 11 App. Cas. 350; *Reid* v. *Macbeth*, [1904] A. C. 223.

It is well settled that the fact of an unfinished ship being in a shipbuilder's yard is not enough by itself to raise a reputation of ownership on the part of the ship-builders; *Holderness* v. *Rankin*, 29 L. J. Ch. at p. 761; *M'Bain* v. *Wallace*, 6 App. Cas. at p. 606.

(*e*) At common law the builders will have a lien for their charges until they make delivery afloat under clause 2: *Franklin* v. *Hosier*, 4 B. & Ald. 341; *Ex p. Willoughby*, 16 Ch. D. 604 (both cases on repairs, but the principle is the same). An unfinished ship is liable to be distrained upon for rent owing by the builders as lessees of the yard or dock, see *Clarke* v. *Millwall Dock Co.*, 17 Q. B. D. 494; but a statutory protection is now given by the Law of Distress Amendment Act, 1908, ss. 1, 2.

(*a*) As to this clause not extending to bankruptcy, see *Ex p. Barter*, 26 Ch. D. 510; *ante*, p. 8, note (*a*).

(*aa*) As to the stamping of policies of insurance on ships under construction, see Rev. Act, 1903, s. 8.

vessels as afsd or to keep such insurces on foot, the pchasers may effect & keep up such insurces & deduct the expses throf togr with intt thron at the rate of £5 p.c. p.a. from the time of payg the same from the pchase-moy], & if the sd vessels or their machinery or any pt throf shl be destroyed or damaged by fire, the moy received in respt of the insurces throf shl be applied in rebldg or reinstatg the same.

No payment for extra work.

8. No extension of time shl be allowed, & no paymt whatever shl be made for extra work & materials (but such extras shl be considered as done for the satisfon of the builders), unless bfe the same are done or provd, the pchasers by writg under the hand of one of their directors & their secretary direct such extras to be done or provd, & agree to the extension of time & increase of cost to be allowed in respect throf. The pchasers shl be at liberty to require any alterons or addons to be made in or to the vessels, engines, boilers, or machinery [provd such alteron or addon does not injuriously affect the genl intention and design of the sd specificon &], provd they do so in writg under the hand of one of their directors & their secretary, in wch case the terms & prices of such alterons & addons, & the extension of time (if any) to be allowed in respt throf shl be agrd upon in writg, & this agrmt shl thenceforth take effect as varied by such suppl agrmt.

Purchasers may, by writing, require alterations.

Trial trips.

9. The trial trips shl be [betn the ports of —— & —— & shl be] at the risk & expse, in all respts, of the builders, who shl find the crew necy for the safe navigon of the vessels & for the engine departments on such trial trips, & the coals & engine stores, & also the marine insurce (*b*) on such trials, & no delivery shl be considered complete until after a trial satisfactory to the pchasers' engineer or surveyor.

Extension of time in case of strike or

10. In the event of a strike or lock-out (*c*) of workmen takg place in the district & extendg to the builders' yard, or any other place where the materials for the sd vessels or the

(*b*) As to the requisites of a marine policy, see Marine Insurance Act, 1906, s. 23, and Arnould's Marine Insurance. As to non-disclosure of material facts, see *Pickersgill & Sons, Ltd.* v. *London, &c., Insurance Co., Ltd.*, [1912] 3 K. B. 614; *Property, &c., Co.* v. *National, &c., Co.*, 108 L. T. 104; *Scottish Shire Line* v. *London, &c., Insurance Co.*, [1912] 3 K. B. 51; *Cantiere Meccanico* v. *Janson*, [1912] 3 K. B. 452; *Gooding* v. *White*, 29 T. L. R. 312; *Associated Oil Carriers* v. *Union Insurance Society*, [1917] 2 K. B. 184; *Cheshire & Co.* v. *Vaughan Bros.*, [1920] 3 K. B. 240; *London, &c., Co.* v. *General, &c., Assocation*, [1921] 1 K. B. 104.

(*c*) As to strikes and lock-outs, see *ante*, p. 4, note (*b*).

machinery throf are prepared, or in case the hours of labour of the workmen employed by the builders shl be reduced below those at psnt customary in their works, so as to interfere with the constron of the sd vessels, & provd that notice in writg of such strike or lock out or reduction in the hours of labour shl be immedly given by the builders to the pchasers at their office in ——, or in case of any delay takg place in the paymt of any instalmt of the pchase moy, the builders shl be allowed one day's extension of time for the bldg & complon of the sd vessels for each day of strike or lock-out or delay in paymt, or, in case of such reduction in the hours of labour as afsd [or the outbreak of fire or other accident or event beyond the control of the builders (*d*) happening to delay the constron of the sd vessels], shl be allowed a pper extension of time to be settled in case of diffce by a reference as hrinar provd.

delay in payment of any instalment.

11. In the event of any instalmt of the pchase-moy remaing unpd for fourteen days after the same is due, the builders shl be entitled to intt thron at £2 p.c. p.a. over the current Bank of England rate, & shl be at liberty to sell the vessel upon wch such instalmt may be overdue, as she may then lie, with the engines, boilers, & machinery, or may complete her & sell her after complon by public auction or private contract, & any loss on such resale shl be made good by the pchasers, & any balce of the proceeds of such sale wch may remain after satisfyg all claims of the builders shl be pd to the pchasers.

Provisions in case of default in payment of purchase money.

12. In the event of any defective work or material being discovered in the sd vessels, or either of them, or the engines, boilers, or machinery throf within six months after the same shl have been delivered to the pchasers, wch shl be proved by them to have existed at the time of such delivery, then & in such case the same shl be repaired & replaced by the builders or at their expse, but this shl not include consequential damage or any extra cost beyond the expse of such repairs if the same were done in Great Britain or Ireland (*a*).

Defective work.

13. *Arbitration clause* (*b*). *See* Arbitration.

(*d*) See *ante*, p. 4, note (*a*).

(*a*) In some cases it may be desirable to confine the guarantee contained in the above clause to the engines, boilers, and machinery, and to rely upon the provisions of clause 3 as affording sufficient protection against the risk of defective work and materials.

(*b*) See *ante*, p. 12, note (*f*).

In witness whrof the builders (*c*) & the managing director *or as the case may be* (*d*) of the pchasers have hrunto set their hands, *or*, " the builders have hrunto set their hands & seals, & the pchasers have caused their common seal to be hrunto affixed " the day & yr first above written.

V.

AGREEMENT *engaging a* Manager *of a* Business, *or other* Officer, *to be paid a* Salary *and a* Percentage *on the* Gross Returns *or* Profits. Variations *where he is to go* Abroad.

Parties. *Parties*, A., *principal*, 1 ; B., *manager*, 2.

Engagement of B. as manager for a term.

1. The sd B. shl durg the term of —— yrs (*e*) from the —— day of —— next [now last past] (*f*), if both pties shl so long live, & the sd A. shl continue to carry on the business (*g*) of ——, [at ——, in India], whether alone or in ptnp with any other pson or psons, serve the sd A. as manager, *or* " superintendent," *or* " foreman " [at —— afsd] of the sd business, & shl give his whole time & attention to the sd business, & shl use his best endeavours to improve & extend the same,

(*c*) See *ante*, p. 16, note (*b*).

(*d*) See *ante*, p. 16, note (*c*).

(*e*) An agreement for one year's service to commence on the day following the agreement is not within s. 4 of the Statute of Frauds: *Smith* v. *Gold Coast, &c., Ltd.*, [1903] 1 K. B. 285, 538; but see *Dollar* v. *Parkington*, 84 L. T. 470. As to what agreements are within the Statute, see *Lavalette* v. *Riches & Co.*, 24 T. L. R. 336, discussed 52 Sol. J. 276; *Reeve* v. *Jennings*, [1910] 2 K. B. 522; *Hanau* v. *Ehrlich*, [1912] A. C. 39; *Cayme* v. *Allan, Jones & Co.*, 35 T. L. R. 453; *Scott* v. *Pattison*, [1923] 2 K. B. 723.

A valid contract in writing, required by statute to be in writing, cannot be varied by a subsequent parol agreement which does not comply with the statute: *Noble* v. *Ward*, L. R. 2 Ex. 135; *Cutts* v. *Taltal Railway*, 62 S. J. 423; see *British and Benington's, Ltd.* v. *North Western Cachar Tea Co., Ltd.*, [1923] A. C. 48; but may be expressly or impliedly rescinded by a parol agreement which is unenforceable because it is not in writing, provided that there is a clear intention to rescind as distinguished from an intention to vary: see *Morris* v. *Baron & Co.*, [1918] A. C. 1, 26, where the authorities are discussed.

(*f*) Where the remuneration of a manager or other person employed to assist in the carrying on of a business is to depend either wholly or in part upon the profits to be derived from the business, the term of employment should in all cases be reckoned from the commencement of a business year.

(*g*) As to the necessity of these or similar words, see *post*, p. 44, note (*d*).

& shl in all respts diligently & faithfully obey & observe all lawful orders and instructions of the sd A. in relation to the conduct of the sd business, & shl not, witht his consent, divulge any secrets (*a*) or dealgs relatg thto, [& will not during the continuance of this agrmt or within —— yrs after the determinon throf engage or be concerned or interested in any other business of a like nature (*b*)].

[**2.** The sd B. shl when reqd by the sd A. proceed to ——, by ——, his boat & railway fares, hotel & other expses on the journey being pd by the sd A.] Manager to proceed abroad.

3. The sd B. shl, whenever reqd by the sd A., render to him a full acct of all dealgs & transons in the sd business, & shl keep at the place of business at —— pper books of acct, contg entries of all moys reced & pd, and all goods bought, or reced, or sold, or delivered out, & all parlars relative thto, & other matters necy to show the state of the sd business, & shl duly acct for all moys & secs belongg to the sd A., wch shl come into the hands or power of the sd B., & forthwith pay the same to the sd A., or to the bankers for the time being of the sd A. to his credit, except only such moys as the sd B. shl be authorised by the sd A. to retain for the immediate requirements of the sd business. To keep accounts, and pay over moneys.

4. The sd A. shl pay to the sd B. durg the continuce of his engagemt & provd he shl duly observe & pform the agrmts hrin on his pt contained, the salary of £—— p.a., by equal qtrly paymts, on the —— day of ——, &c., [on the usual qtr days] in each yr, witht any deduction except for income-tax, [a due proportion of] the first paymt to be made on the —— day of —— next: And shl also pay to the sd B. at the end of each yr durg the sd period of —— yrs such further sum as shl be equivalent to To be paid a salary. And percentage on gross returns.

(*a*) As regards disclosure by an ex-servant of information obtained in the employ of his late master, see *Amber Size, &c., Co.* v. *Menzel*, [1913] 2 Ch. 239, where the earlier authorities are discussed; and see *Alperton Rubber Co.* v. *Manning*, 86 L. J. Ch. 377.

(*b*) In the absence of a negative stipulation the manager cannot be restrained by injunction from giving part of his time to another business, see *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416; *Chapman* v. *Westerby*, 58 Sol. J. 50; *Mortimer* v. *Beckett*, [1920] 1 Ch. 571. A covenant not to be "interested" without more, will not generally afford sufficient protection: *Gophir Diamond Co.* v. *Wood*, [1902] 1 Ch. 950; *British Concrete Co.* v. *Schelff*, [1921] 2 Ch. 563, 573.

See further as to agreements in restraint of trade, *post*, pp. 39 *et seq.*

[10] p.c. on the gross sale returns (*a*) for the yr of the sd business [at ——], without any deduction [for trade or cash discounts or credits], *or if the term of employment commences from a day then past*: "And shl pay to the sd B. at the end of the first yr of the sd period of —— yrs such further sum as shl be equivalent to —— p.c. & at the end of each subsequent yr durg the same period such further sum as shl be equivalent to [10] p.c.," &c. Such last mentd yrly paymts to be calculated from the sd —— day of —— to the —— day of —— in each yr commencg from the sd —— day of —— next [last past] & to be payable on the —— day of —— in the next following yr,

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Variations where percentage is reckoned on net profits;

(*a*) If the percentage is to be reckoned on net profits, say, "And shl also pay to the sd B. at the end of each yr during the sd period of —— yrs such further sum as shl be equivalent to [10] p.c. on the net profits for the yr (if any) of the sd business [at ——] after deducting intt upon capital, rent, rates, taxes, repairs, wages, & other outgoings, expses & charges properly deducted in accordance with the usual custom of the sd business in the estimon of net profits," or if the term of employment commences from a day then past, "And shl pay to the sd B. at the end of the first yr of the sd period of —— yrs such further sum as shl be equivalent to —— p.c., and at the end of each subsequent yr during the same period such further sum as shl be equivalent to [10] p.c.," &c. For the purpose of the above provision, the net profits must be ascertained before the deduction of income tax: *Johnston* v. *Chestergate, &c., Co.*, [1915] 2 Ch. 338. If the percentage is to be reckoned on gross profits, say, "And shl also pay to the sd B. at the end of each yr during the sd period of —— yrs such further sum as shl be equivalent to [10] p.c. on the gross profits for the yr of the sd business [at ——], witht deducting intt upon capital, rent, rates, taxes, repairs, wages, or other outgoings or expses properly deducted in the estimon of net profits only, but deducting nevertheless the amt of all bad or doubtful debts." Where the term of employment commences from a day then past, variation as above.

on gross profits.

As to the meaning of "profits" and the mode in which, in the absence of express stipulation, they must be calculated as between the partners and third parties, see *per* Fletcher Moulton, L.J., in *Re Spanish Prospecting Co.*, [1911] 1 Ch. 92; *Re Crabtree*, 106 L. T. 49; *Vulcan, &c., Co.* v. *Hampson*, [1921] 3 K. B. 597. Upon wrongful dismissal an employee, though entitled to damages in respect of a fixed salary, is not entitled to damages for loss of opportunity to earn commission: *Re R. S. Newman, Ltd.*, [1916] 2 Ch. 309.

or so soon thrafter as the amt throf shl have been ascertained in accordce with this agrmt. PROVD always that upon the death or terminon of the engagemt of the sd B. before the expiron of the sd period of —— yrs the sd A. shl forthwith pay to the sd B. or to his exs or ads, as the case may be, in respt of his services for the whole or any pt of the then current yr of the sd period a due proportion of the sd salary of £——, [togr with such further sum, in lieu of such percentage as afsd, as shl represent a due proportion of a sum equivalent to [10] p.c. of the estimated gross returns [net profits] for the then current yr of the sd business [at ——]] such gross returns [net profits] to be estimated at a sum equal to the [average] gross returns [net profits] of the sd business [at ——] for the [three] yr[s] immedly precedg the sd then current yr.

Provision for termination of engagement.

[5. WITH a view to ascertaing the amt of such further sum as afsd, the accts of the sd business [at ——] shl, at the end of each yr during the sd period of —— yrs, be made up by, or under the direction of, the sd A., & a pper acct throf, showg the gross returns [net, *or*, gross profits] for the yr of the sd business, shl be prepared & furnished as soon as may be to the sd B., & shl, on being verified by a statutory declaron of the sd A., or of some pson who shl have been employed by him to make up the sd acct, be bindg & conclusive upon the sd B., *or* " & submitted to Messrs. —— or other the acctants or acctant for the time being of the sd A., & shl, on being verified by the certfe of the sd acctants or acctant, be bindg & conclusive upon the sd B " (*b*).]

Annual accounts.

[6. NOTHING hrin contd shl be construed as in any sense creatg a ptnp betn the sd A. & B., or as givg to the sd B. any of the rts or renderg him subjt to any of the liabilities of a ptner except such a rt to an acct of the gross returns [net profits] of the sd business as shl be necy for the ppose of ascertaing the amt of any further sum payable to him as afsd, in case such amt shl not be ascertained & verified in mner hrinbfe provd.]

Agreement not to create a partnership (*c*).

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b) As to the effect of this provision, see *Johnston* v. *Chestergate, &c., Co.*, [1915] 2 Ch. 338.

(*c*) This agreement does not create a partnership between A. and B.: *Ross* v. *Parkyns*, L. R. 20 Eq. 331; *Walker* v. *Hirsch*, 27 Ch. D. 460; P. Act, 1890, s. 2 (3) (*b*), explained, *post*, p. 28.

Board and lodging.

7. The sd B. shl also durg the continuce of his engagemt be provd by the sd A. with a suitable residce at ——, or elsewhere, free from rates & taxes, *or*, " with good & sufft meat, drink, lodging, washg, & fuel, & shl, if required by the sd A., reside in the house in wch the sd business is now, or shl for the time being be carried on, & shl in that case have the use of —— rooms thrin, free from all rent, rates (*a*), & taxes in respt thof."

Termination by notice (*b*).

8. Either of the pties hto may terminate the engagemt of the sd B. at any time bfe the expiron of the sd term of —— yrs, on givg, or sendg by post in a registered letter to the other party, six calr months' notice in writg, such notice to be given or sent to the sd A. at his usual place of abode or business in England, & such notice to be given or sent to the sd B. at his usual place of abode, or at the countg-house at wch the sd business shl then be carried on [in India], & upon the expiron of six calr months from the date of such notice being given or posted, the sd engagemt shl determine : Provd always that the sd A. may terminate the sd engagemt at any time on paying to the sd B. in lieu of such notice as afsd, six calr months' salary in advance [with a further sum in lieu of such percentage as afsd, for such six months, equal to one-half of the amt wch became payable by way of percentage for the then last precedg twelve months, for wch accts shl have been made up & an acct thof verified as afsd].

Or on payment of six months' salary.

Occupation by servants.

(*a*) On the general law of rating with reference to the occupation of premises by servants and others, see *Smith* v. *Seghill Overseers*, L. R. 10 Q. B. 422 ; and see *Dover* v. *Prosser*, [1904] 1 K. B. 84. It is a question of fact whether the occupation is that of the master or servant, the test being whether " the apartments of the servant are only an appendage of the service, and allotted to him for the more convenient performance of the service," *Rex* v. *Minster*, 3 M. & S. at p. 279.

(*b*) Unless the agreement provides clearly to the contrary, the principal cannot dismiss the employé except for misconduct (or where the employee has himself given notice which has been accepted as an anticipatory breach : *Re Lavey* (*No.* 2), [1920] 1 K. B. 674), without reasonable notice : *Re African Association, Ltd.*, [1910] 1 K. B. 396 ; *Nelson* v. *Nelson & Sons, Ltd.*, [1914] 2 K. B. 770 ; *Payzu, Ltd.* v. *Hannaford*, [1918] 2 K. B. 348 : or salary in lieu of notice.

As to the meaning of " wrongful dismissal," see *Re Rubel, &c., Co.* [1918] 1 K. B. 315. The termination without notice of an agreement for an indefinite period with a commission agent who is not an employee is not wrongful dismissal : *Levy* v. *Goldhill*, [1917] 2 Ch. 297.

9. If the sd B. shl at any time wilfully neglect or refuse, or from illness or any other cause, become or be unable to pform any of the duties devolvg upon him under this engagemt, the sd A. may suspend the salary [and the further sum by way of percentage] of the sd B. during such neglect, refusal, illness, or inability as afsd: And further, the sd A. in the event of such refusal or neglect of the sd B. or his becomg incapacitated by illness or orwise [or ceasing to carry out his duties to the satisfaction of the sd A. (*d*)], may immedly terminate the engagemt of the sd B. witht givg any such notice, or makg such paymt in advce as is provd for in clause **8** hrof (*e*). Provision for default or incapacity of manager. Power to suspend (*c*), or determine.

[**10.** The sd A. shl pay the boat & railway fares, hotel & other expses of the journey of the sd B. on his return to England in any of the following events:— Expenses of return journey to be paid.

(i) If the sd A. shl terminate the engagemt of the sd B. by notice psuant to clause **8** hrof, & the sd B. shl start on his journey to England within three calr months from the expiron of such notice. On termination by notice,

(ii) If the sd A. shl terminate the engagemt of the sd B., psuant to clause **9** hrof, in consequence of the illness of the sd B., & such illness shl not have been occasioned by the fault of the sd B., & the sd B. shl start on his journey to England within three calr months from such terminon of his engagemt, or so soon afterwards as he shl be able to journey with safety. or in case of illness,

(iii) If the engagemt of the sd B. shl continue until the expiron of the sd term of —— yrs, & he shl always conduct himself pperly in the pformce of his duties, & shl start on his journey to England within three calr months from the expiron of the sd term of —— yrs.] or at end of engagement.

[**11.** If the engagemt of the said B. shl at any time, within two yrs from the date of this agreemt, be terminated by notice given by the sd B. psuant to clause **8** hrof, or be terminated from any cause other than the illness of the sd B., psuant to clause **9** hrof, he, the sd B., shl thrupon immedly Repayment of passage money.

(*c*) Apart from an express provision of this kind the employer would have no power to suspend the employee for a period instead of dismissing him: *Hanley* v. *Pease*, [1915] 1 K. B. 698.

(*d*) See *Diggle* v. *Ogston Motor Co.*, 84 L. J. K. B. 2165.

(*e*) It may sometimes be desirable to give power to the principal to determine the engagement if the manager shall have a receiving order made against him, or become bankrupt, or execute an assignment for the benefit of his creditors.

repay to the sd A. the sum pd by the sd A. psuant to clause **2** hrof. Such sum may be recovered by the sd A. as a debt due from the sd B., in an action or orwise in any Court of competent jurisdon [in England or India]. Provd that this clause shl not prejudice or affect any other claim or remedy of the sd A. agst the sd B. for breach of contract.]

Sureties. **[12.** The sd B. shl, at his own expse, find & provide two responsible sureties to the amt of £—— each or the guarantee of a responsible Co to the amt of £—— for his good conduct, & for the due pformce by him of this agrmt.]

In witness, &c.

VI.

AGREEMENT *under* Seal *with* Traders *for a* Loan *for a* Term *of* Years *at* Interest *and a* Share *of* Profits (*a*).

Parties. THIS INDRE, made the —— day of —— 19—, Betn A. & B., carryg on business in ptnp togr as —— at ——, under

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As to what constitutes partnership. (*a*) Partnership agreements under the Limited P. Act, 1907, as to which see Vol. 2, *sub. tit.* Partnership, will no doubt in many cases supersede agreements of the kind given in the text.

Where prior to the Limited P. Act, 1907, money was advanced to a business as capital, so as to entitle the lender to an aliquot share of the capital of the business absolutely with the right to control the remainder of the capital, the lender could not escape from all the liabilities of a general partner in the business. See *Syers* v. *Syers*, 1 App. Cas. 174; *Pooley* v. *Driver*, 5 Ch. D. 458; *Ex p. Delhasse*, 7 Ch. D. 511. Advances to traders for the purposes of their business might nevertheless and may still be made in such a manner as to exclude altogether the relation of partnership between the lender and the borrowers, notwithstanding the inclusion of a stipulation that the lender shall receive a rate of interest varying with the profits or a share of the profits. The agreement in the text, for instance, would clearly be within the protection of s. 2 (3) (*d*) of the P. Act 1890. That section, though commencing with the provision that the receipt by a person of a share of the profits of a business is *primâ facie* evidence that he is a partner in the business, is not to be construed as meaning that a partnership is proved by the receipt of a share of profits unless it is rebutted by something else, but merely as embodying the rule laid down in *Mollwo, March & Co.* v. *Court of Wards*, L. R. 4 P. C., at p. 433; and *Badeley* v. *Consolidated Bank*, 38 Ch. D., at p. 258, that the whole scope of the agreement and all its terms ought to be looked at before any presumption of intention is made at all: *Davis* v. *Davis*, [1894] 1 Ch. 393; *Re Beard*, [1915] H. B. R. 191; and see *Re Jane*, 110 L. T. 556. The statute law in this respect may, therefore, be taken as declaratory merely of the previous case law, the result of which appears to be that unless the

the style or firm of A. & Co. (hrinar called the borrs) of the one pt, & C. of, &c. (hrinar called the lender, wch expression shl where the context so admits be deemed to include his exs, ads, & assns), of the other pt: WHAS the lender has agrd with the borrs to lend to them the sum of £—— for the term of —— yrs from the —— day of —— last past upon havg the repaymt of the same with such intt as is hrinar mentd secd in mner hrinar appearg, NOW THIS INDRE WITNESSETH that in pursuance of the sd agrmt & in conson of the sum of £—— now pd to the borrs by the lender (the rect whrof is hby acknowledged) the borrs hby covt & each of them hby covts with the lender that they the borrs or one of them will pay to the lender the sum of £—— on the —— day of ——, AND until the sd ppal sum shl be repaid will pay to him intt thron or on so much throf as shl remain owing at the rate of £—— p.c. p.a. by eql qtrly paymts on the usual qtr days in each yr, AND will also pay to him by way of addonal intt at the end of the first yr of the sd period of —— yrs such further sum as shl be equivalent to one eql —— pt of the net profits (if any) for the yr of the sd business & at the end of each subseqt yr durg the same period such further sum as shl be equivalent to one eql —— pt of the net profits (if any) for such subseqt year, such last-mentd yrly paymts to be payable on the —— day of —— in each yr, & the first of such paymts to be made on the —— day —— next. PROVD always that upon repaymt of the sd sum of £—— before the expiron of the sd period of —— yrs the borrs shl pay to the lender by way

Recital.

Covenant to pay principal, interest and share of net profits.

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meaning of the agreement thus construed is that the parties should carry on the business as principals and as agents for each other, *i.e.* as a joint business, an agreement for a partnership will not be inferred: *Cox* v. *Hickman*, 8 H. L. C. 268; *Bullen* v. *Sharp*, L. R. 1 C. P. 86; *Holme* v. *Hammond*, L. R. 7 Ex. 218; *Ex p. Mills*, L. R. 8 Ch. 569; *Ex p. Sheil*, 4 Ch. D. 789; *Ex p. Tennant*, 6 Ch. D. 303; *Badeley* v. *Consolidated Bank*, 38 Ch. D. 238; *Hawksley* v. *Outram*, [1892] 3 Ch. 359; *Gosling* v. *Gaskell*, [1897] A. C. 575. The insertion of a provision such as that in clause 6 is by no means conclusive of the general intention; *Ex p. Delhasse, supra*; *Re Jane, sup.*

A person who advances money to a trader in consideration of taking a fixed sum out of (*Re Young*, [1896] 2 Q. B. 484) or a share of (*Re Fort*, [1897] 2 Q. B. 495) the profits, will be postponed on the trader's bankruptcy under s. 3 of the P. Act, 1890, notwithstanding a subsequent alteration of the terms of the advance to a fixed rate of interest: *Re Hildesheim*, [1893] 2 Q. B. 357.

of addonal intt, in lieu of such addonal intt as afsd, such further sum as shl represent a due proportion of a sum equivalent to one eql —— part of the estimated net profits (if any) for the then current yr of the sd business, such net profits to be estimated, &c. *See Clause* **4** *of Precedent V.* And it is hby agrd as follows, that is to say:—

1. *Annual Accounts, Form* **5**, p. 25.

Footing upon which accounts to be taken.

2. The sd acct shl be taken in all respts upon the footing indicated in Clause —— of the Articles of Ptnp of the borrs, *or* "usually adopted in accts of a like nature taken by psons engaged in a like business," [save that intt on any other capital employed by the borrs in the sd business shl not be charged at a higher rate than —— p.c. p.a., & that] *add such special provisions limiting the amount to be set aside in respect of sinking funds, &c., as may be deemed necessary.*

Borrowers to keep proper books of account.

3. The borrs shl keep all usual & pper books of acct of & concerng all pchases & sales of goods made by them, & of all other matters & transactions concerng the premes, & the sd books & accts & all bills, notes, secs for moy, letters, & other writgs relatg to the matters afsd in the posson or under the control of the borrs shl be carefully preserved by them (damage by fire or other inevitable accident only excepted) & shl at all reasble times be open to the inspection of the lender, who or whose agent or agents shl have full liberty to make copies or extracts of or from the same or any of them.

When the lender may require repayment,

4. The lender may require repaymt of the sd sum of £—— to be made bfe the sd —— day of —— if the borrs shl cease to carry on the sd business [or shl, witht the consent in writg of the lender, admit any ptner with them in the sd business], or if any qtrly paymt of the sd intt on the sd sum of £—— or any sum payable by way of addonal intt as hrinbfe

on notice.

provd shl be in arrear for twenty-eight days, or if the lender shl have given to the borrs or sent by post to their place of business for the time being not less than —— calr months' notice in writg in that behalf.

Borrowers may repay on notice.

5. The borrs may repay the sd sum of —— at any time bfe the sd —— day of —— on givg to the lender or sendg by post to his usual or last known address not less than —— calendar months' notice in writg of their intention in that behalf, such notice to expire on the —— day of —— in any yr.

6. *Agreement not to create a partnership, see* p. 25, *clause* **6.**
7. [*Arbitration clause, see* ARBITRATION.]
IN WITNESS, &c. (*a*).

VII.

AGREEMENT *between a* BANKING COMPANY *and a* MANAGING DIRECTOR *of a* BRANCH ABROAD.

PARTIES, The —— Bank Ltd (hrinar called the Bank), 1. A. of, &c. (hrinar genlly called the Managing Diror), 2. Parties.

1. THE sd A. shl become & be from & after the —— day of —— Managing Diror of the business of the Bank, at its branch establishmt (hrinar called the Branch) opened or forthwith to be opened in ——. A. to be managing director.

2. THE Managing Diror shl possess all such powers, & pform all such duties as shl be necy usual or convenient to enable him effectually to manage & superintend the business of the Branch, subjt nevertheless to the stipulons hrinar contained & to any such addonal or other stipulons & condons as may from time to time hrafter be created or imposed by any resolutions of the Bank or its Board of Dirors. Powers and duties

3. FOR the pposes of the business at the Branch, the Managing Diror shl have power to authorise & make all necy expenditure & pay all necy outgoings, & to hire & employ all such clerks, messengers, or other servants as he shl consider to be reqd for carryg on the business of the Branch, & shl also have the absolute control over, and also power at his absolute discron to discharge any such psons, save & except that he shl, if & when expressly reqd so to do by the Bank or its Dirors, hire, employ or dismiss any clerk, messenger, or other servant, whether such hirg, employmt or dismissal shl be accordg to his wish or not. Managing director to pay outgoings and hire clerks.

4. THE Managing Diror shl make out & deliver, or transmit to the Bank or its Board of Dirors, or to such pson or psons as they shl require from time to time, a statemt of such expenditure & outgoings, & of the psons so employed, & the amt of the salaries, wages, or other remuneron to wch they are resply entitled, & in respt of what matter or services such To transmit to Bank statement of outgoings.

(*a*) The deed should be executed by each party in his own name.

expenditure or outgoings, salaries, wages, or other remuneron is or shl be payable, togr with such other parlars in relation to such matters or psons as the Bank or its Dirors shl from time to time require.

To keep accounts.

5. The Managing Diror shl keep, or cause to be kept, full & correct entries, minutes or accts of all Bankg accts opened or withdrawn, & of all rects of moys, secs or effects, & of all advces made & discounts or credits granted, & of all special operons entered into on behalf of, or connected with, and of the general assets, balances, debts, & credits of the Branch, & also all such further or other parlars & details as shl from time to time be reqd by the Bank or its Dirors with reference thereto.

To transmit to Bank statement of business,

6. The Managing Diror shl also from time to time, as & when he shl be reqd by the Bank or its Dirors so to do, compile or extract, & transmit to the Bank or its Dirors at its chief establishmt in London or elsewhere, as reqd, or to any officer throf or other pson or psons who shl be duly named for that ppose, an abstract, epitome, or statemt in full detail of all parlars & ordinary or special circumstances relatg to the sd business at or connected with the Branch, or to his managemt of the same, & parlarly & immedly upon the occurrce of any circumstance callg for special attention on the pt of the Bank or its Dirors, shl transmit to the sd chief establishmt full & sufft notice throf, & also shl at any time permit the Bank or its Dirors, or any pson or psons duly authorised by the Dirors in that behalf, to inspect & examine all books of acct, entries, minutes, & other parlars so kept by him, & shl give to the Bank or its Dirors, or any pson or psons authorised by them as afsd, all such informon, facilities, & assistce as shl be reasbly reqd, to enable them or him fully to understand any such accts or other parlars.

and important information.

To permit inspection of accounts.

Faithful dealing.

7. The Managing Diror shl not divulge or make known in any mner whatsr any dealgs or concerns of or relatg to the business of the Bank, wheresr carried on or transacted, witht the authority of the Bank or its Dirors, but shl at all times be true and just to the Bank in all his dealgs, & shl not injure or unduly pledge its credit or assets, or employ or make liable the same save in the usual & regular course of business, & shl use his best endeavours & exertions to promote the welfare of the Bank & its business, & shl give his whole time & attention to the business of the Branch, & shl not give his time or

psonal attention to any other business or mercantile transons whatsr (*a*).

Guarantee.

8. The Managing Diror shl at his own expse, if & when reqd by the Bank or its Dirors, procure a guarantee or guarantees for his duly & faithfully executg & pformg the duties of his sd office & the provons of this agrmt in every respt to such an amt as the Bank or its Dirors shl require, not exceedg £——, from by or with some responsible pson or psons, or Co or Cos, & shl deposit with the Bank the instrumt or instrumts by wch the same shl be effected.

Salary.

9. The Bank shl pay the Managing Diror after the rate of £—— British sterlg moy p.a. for his services as such Managing Diror by equal qtrly paymts, & by way of further remuneron for his services at the end of each yr durg the term of three yrs from the sd —— day of —— (*b*), a commission at the rate of £15 for every £100 of net profits (*c*) made durg each of such three yrs by the business of the Branch, after deductg all usual & necy outgoings & expses throf & intt on capl at the rate of £5 p.c., & after the expiron of such three yrs & durg the term of five yrs thrafter, a commission at the rate of £10 for every £100 of such net profits in each of such five yrs after such deductions as afsd: But so, nevertheless, that in no yr durg such five yrs shl the commission so to be reced by him be in the whole less than the greatest amt reced by him on acct throf in any one of the three yrs precedg such term of five yrs.

Commission.

First year to be probationary.

10. During the first yr of the sd term of three yrs the engagemt hby made of such Managing Diror shl be considered to be probationary or experimental, & at the end of such first yr either party hto may by notice in writg to the other party forthwith terminate this psnt agrmt & the engagemt hby made.

Bank may terminate engagement at the end of three years.

11. The Bank or its Dirors may terminate this agrmt & the engagemt hby made at the expiron of three yrs from the sd —— day of —— by givg at least —— calr months' prior notice in writg to the Managing Diror.

(*a*) See *ante*, p. 23, note (*b*).

(*b*) In the above precedent it is assumed that the branch is to be opened upon the first day of the business year of the Bank. If this is not the case, say here "from the —— day of —— last past," naming such first day. See *ante*, p. 24, note (*a*).

(*c*) See *ante*, p. 24, note (*a*).

Termination by notice (*d*).

12. Either of the pties hto may at any time terminate this agrmt & the engagmt hby made, by givg to the other party hto —— calr months' notice in writg, but so nevertheless that either party givg such notice under this psnt provon shl, at the expiron throf, pay to the party receivg the same the sum of £——, as liquidated damages for such terminon of this agrmt, except that in case the Managing Diror shl misconduct himself in his sd office, or fail to observe & pform the provons of this agrmt, no such sum by way of liquidated damages shl be pd to him.

Proportionate part of salary to be payable on death (*e*).

13. In the event of the terminon of this agrmt & of the engagemt hby made by the death of the Managing Diror or by notice given to him by the Bank or its Dirors, the Bank shl, unless the Managing Diror shl have misconducted himself in his sd office (in wch case he shl forfeit all right to any further remuneron), forthwith pay to the Managing Diror or to his exs or ads, &c. *See Precedent V., clause* **4**.

Notices.

14. Any notice hby authorised or reqd to be given by the Bank to the Managing Diror shl be sufftly given by postg the same in a registered letter addressed to him at the Branch or by leavg the same in his usual private room at the Branch, & any notice hby authorised or reqd to be given by the Managing Diror to the Bank shl be sufftly given by postg the same in a registered letter addressed to the Manager of the Bank at the ppal office in London or elsewhere.

Law of England to apply (*a*).

15. Lastly. This agrmt shl in all respts be construed & carried into effect accordg to the law of England, so far as may be & circumstances will permit.

In witness, &c.

VIII.

AGREEMENT *under* seal *appointing an* Editor and Manager *of a* Newspaper.

Parties.

Recitals.

Parties, A. & B., *Proprietors*, 1. C., *Editor*, 2. Whas the sd A. & B. carry on business in co-ptnp as proprietors of a

(*d*) See *Re African Association, Ltd.*, [1910] 1 K. B. 396, *ante*, p. 26.

(*e*) In the absence of a provision of this nature, the salary would not be apportionable; *Moriarty* v. *Regent's Garage Co.*, [1921] 2 K. B. 766.

(*a*) See *Hamlyn & Co.* v. *Talisker Distillery*, [1894] A. C. 202; *South African Breweries, Limited* v. *King*, [1900] 1 Ch. 273; *Spurrier* v. *La Cloche*, [1902] A. C. 446; *British South Africa Co.* v. *De Beers, Ltd.*, [1910] 1 Ch. at p. 381; [1912] A. C. 52; *Re Mackenzie*, [1911] 1 Ch. 578; *Pena Copper Mines* v. *Rio Tinto Co.*, 105 L. T. 846; *Re Smith*, [1916] 2 Ch. 206.

certain newspaper or periodical called, &c.; printed & published at, &c.: And whas it has been agrd that the sd C. shl be appted resident editor and manager of the sd newspaper or periodical for the period at the salary & subjt to the covts & condons hrinar mentd & contained, NOW THIS INDRE WITNESSETH that it is hby covted & agrd by & betn the sd parties hto as follows :—

Appointment of C. as editor.

1. The sd A. & B. hby appt the sd C. resident editor & manager of the sd, &c., for the term of five yrs commencg from, &c.

Agreement not to be affected by death of partners, &c. (*c*).

2. The sd C. shl hold the sd office of resident editor & manager [unless prevented by death or illness (*b*)] for the sd term of five yrs subjt to the provons of this agrmt wch shl not be affected by the death or retiremt from the sd business of either of them the sd A. or B. or the admission into ptnp with them or either of them in the sd business, of any other pson or psons or any alteration in the name of the sd newspaper or periodical so long as the sd A. & B. or either of them shl continue to be interested as pt or sole proprietors or proprietor of the sd business.

(*b*) See *post*, p. 38, note (*c*).

Contract for personal service with firm.

(*c*) A contract for personal service made with a firm is generally construed in relation to the state of things existing at the time the contract was entered into, that is to say, as personal to the contracting parties: Lindley, 8th ed., 144. In the absence therefore of any expression of contrary intention such as that in the text (*cf.* the provision, *post*, p. 39), the death or retirement of a partner or other change in the constitution of the firm may operate to determine the contract: *Tasker* v. *Shepherd*, 6 H. & N. 575, and *cf. Phillips* v. *Alhambra Palace Co.*, [1901] 1 Q. B. 59. If the contract should be so determined contrary to its terms, *i.e.* before the expiration of the time expressly or impliedly fixed for its continuance (the death of a partner being treated apparently as an implied limitation of the term of service), this may amount to a wrongful dismissal of the employé, not only entitling him to damages (*Brace* v. *Calder*, [1895] 2 Q. B. 253), but releasing him from any covenant on his part in restraint of trading: *General Billposting Co.* v. *Atkinson*, [1909] A. C. 118; *Measures* v. *Measures*, [1910] 2 Ch. 248. Where, however, as in Prec. IX., the contract is expressly made determinable without notice on a change in the constitution of the firm, determination upon the happening of such an event is in accordance with and not against the terms of the contract and cannot operate as a wrongful dismissal entailing any such consequences.

An agreement for personal service for a fixed term made with a company will be broken by the voluntary winding up of the company unless it is an express or implied term of the agreement that it is subject to the company continuing to carry on business: see *Midland, &c., Bank* v. *Attwood*, [1905] 1 Ch. 357; *Reigate* v. *Union, &c., Co.*, [1918] 1 K. B. 592.

Powers of management.

3. The sd C. shl durg his tenure of the sd office conduct all the business of editg & orwise in relation to the sd newspaper subjt as hrinar mentd, And shl have full power to appt & dismiss all sub-editors, correspondents, contributors, clerks, servants, & all other psons employed in or about the sd business, And also, in connection with the sd business but not orwise, full powers of purchasg stock, signg bills & rects, increasg & diminishg salaries, prosecutg & defendg actions & legal proceedings, & genlly doing all things which he may *bonâ fide* & to the best of his judgmt consider to be conducive to the intt of the sd business.

Salary.

4. The sd C. so long as he shl be such resident editor & manager shl be allowed out of the business assets the sum of £—— per calendar month as salary, wch shl be pd or may at his option be retained by him out of any moys comg to his hand in connection with the sd business.

Not to do certain things without consent.

5. Nothing hrin contained shl be construed to authorise the sd C. witht the previous consent in writg of the sd A. & B. or either of them being sole proprietor of the sd business & their or his ptners or ptner for the time being in the sd business (hrinar called the proprietors) to mtge or pledge any of the ppty of the proprietors as secy for any loan or debt, or to expend any moy belongg to the proprietors for his private pposes or to pchase real ppty out of the business assets or to remove the press or publishg office or establishmt (except so far as may be temporarily necy for any rebldg, repairs or alterons, or by reason of fire or other accident), or to establish any branch presses or offices, or make any material alteron in the mode of carryg on the sd business.

Covenant by C. to conduct business to best of ability.

To reside and obey instructions.

6. The sd C. will at all times durg his tenure of the sd office conduct the sd business & edit the sd paper to the best of his ability, judgmt & discron, so as to advance the intts of the proprietors, And for that ppose will genlly reside at the sd place of business or such other place as may be fixed upon as the headquarters of the sd newspaper [& shl at all times be subjt to & bound by all instructions & directions wch may be given to him by the proprietors touchg the managemt of the sd business.]

To remit dividends and furnish accounts, &c.

7. The sd C. shl keep at such place of business as afsd pper books of acct, contg entries of all moys received & pd & all parlars relative thereto & other matters necy to show the state of the sd business, & shl durg the sd term duly remit

qtrly dividends (if the state of the sd business shl admit of his doing so) to the proprietors, transmit to them qtrly statemts of acct & reports of the affairs of the sd business, & give to them all informon that may be reasbly reqd.

To hand over to successor on determination of office.

8. The sd C. shl at the expiron or sooner determinon of the sd term of five years, take all pper measures to hand over the sd office of resident editor & manager to any successor duly appted unless he the sd C. shl be reappted for a fresh term.

Not to conduct any other newspaper.

9. The sd C. will not durg the sd term embark in or undertake the conduct or managemt of or be in any way interested (*a*) or concerned directly or indirectly in any other newspaper, journal, or periodical [whose intts are antagonistic to or incompatible with those of the afsd newspaper].

Add provisions, if intended (*b*), *for terminating agreement by notice* (*see Precedents V. & VII.*) *& arbitration clause, see* Arbitration. In witness, &c. (*c*).

IX.

AGREEMENT *to serve as an* Assistant *to two* Persons *in* Partnership *as* Medical Practitioners *and not to practise in the* District *for* —— *years afterwards.*

Parties.

Parties, A. & B. (practisg in ptnp togr as physicians & surgeons [& accoucheurs] at, &c.), 1. C., *assistant,* 2.

Engagement.

1. The sd A. & B. hby agree to engage the sd C., & the sd C. hby agrees to enter into & continue in the service of the sd A. & B., or the survor of them, as assistant in every branch of their profession, practice, & business of physicians, surgeons, accoucheurs, & apothecaries from the —— day of —— (*d*) for the period of —— yrs, & thrafter unless & until the engagemt of the sd C. is terminated by notice or dissolution of the ptnp as hrinar provd.

(*a*) See *post,* p. 43, note (*a*).

(*b*) As to the notice necessary, in the absence of express provision, in accordance with the custom of journalism, see *McCabe* v. *Pathé Frères,* 35 T. L. R. 313; *cf. Grundy* v. *Sun Printing, &c., Association,* 33 T. L. R. 77.

(*c*) See *ante,* p. 15, n. (*b*).

(*d*) The day fixed for the commencement of the term of service should be the first day of the partnership year.

Diligent service.

2. The sd C. shl, while he shl continue in the service of the sd A. & B., or the survor of them, faithfully & diligently serve them or him as such assistant as afsd, & devote his whole time to such service, & at all times obey & comply with their or his lawful commands & directions in relation to the sd business & practice, & to the utmost of his skill & ability serve & promote the intts of the sd A. & B., or the survor of them, & shl not at any time [except in the case of sickness or unavoidable accident (*e*)] absent himself from their or his service witht their or his consent, & shl not, witht such consent divulge or disclose any of the secrets, concerns or affairs of the sd business or practice.

Salary.

3. The sd A. & B., or the survor of them, shl pay to the sd C., while he shl remain in their or his service, and duly pform the agrmts on his pt hrin contained, a salary of £—— p.a., & so in proportion for any less period than a yr, by eql qtrly [monthly] paymts, the first paymt throf to be made on the —— day of —— [and an equal —— pt of the fees recovered by the sd A. & B., or the survor of them, in respt of confinements attended by the sd C.].

Absence from unavoidable cause.

[**4.** In case of the absence of the sd C. from the service of the sd A. & B., or the survor of them, owing to sickness or other unavoidable cause durg a continuous period of more than —— days, the sd A. or B., or the survor of them, may if they or he think fit appt a substitute for the sd C., and may remunerate him out of the salary [& share of profits] hby provd for the sd C.]

Absence without leave.

[**5.** The sd C. shl pay the sum of £—— as liquidated damages to the sd A. & B., or the survor of them, for every day durg wch he shl absent himself from their or his service witht their or his consent for any reason other than sickness or other unavoidable cause.]

Add Clauses giving C. a share in gross or net profits—declaring that no partnership is created,—& providing C. with board & lodging, if so intended. See Clauses **4**, **6**, *&* **7**, *of Precedent V.*

Termination on notice or dissolu-

6. The engagemt of the sd C. may be terminated at any time after the —— day of ——, by either party, on givg to the

(*e*) A contract for personal service is discharged by death or incapacity from illness, see *Robinson* v. *Davison*, L. R. 6 Ex. 269; *Belfast Banking Co.* v. *Hamilton*, 12 L. R. Ir. 105, and the authorities cited *Re Arthur*, 14 Ch. D. 603.

other party —— calr months' notice in writg, expirg at any time after such day, or leavg such notice addressed to such other party at the surgery, or place of business, of the sd A. & B., or the survor of them: And the engagemt of the sd C. shl also cease *ipso facto* & without previous notice in the event of the dissolon at any time of the ptnp of the sd A. & B. orwise than by death (*a*). tion of partnership.

7. The sd C. shl not at any time, while he shl remain in the service of the sd A. & B., or either of them, or within Not to practise in district (*b*).

(*a*) See *ante*, p. 35, n. (*c*).

(*b*) The benefit of this covenant enures to the covenantees jointly and severally; see *Palmer* v. *Mallet*, 36 Ch. D. 411; L. P. Act, 1925, s. 81. An unqualified practitioner cannot enforce such an agreement against a former assistant, see *Davies* v. *Makuna*, 29 Ch. D. 596; and see *Howarth* v. *Brearley*, 19 Q. B. D. 303. As to agreements in restraint of trade, the following rules appear to be established:

1. The restraint must be reasonable with reference to the interests of both parties (*Nordenfeldt* v. *Maxim-Nordenfeldt Co.*, [1894] A. C. 535, 565; *Attwood* v. *Lamont*, [1920] 3 K. B. 571, 589) at the time of making the covenant: *Dowden* v. *Pook*, [1904] 1 K. B. 45, 55; *Lamson, &c., Co.*, v. *Phillips*, 91 L. T. 367, 370. To constitute a reasonable restraint in this sense: Agreements in restraint of trade. Reasonableness between the parties.

(1) The agreement (whether under seal or not) must be for a *bonâ fide* valuable consideration: *Hutton* v. *Parker*, 7 Dowl. 739; but the adequacy of the consideration will not be inquired into: *Hitchcock* v. *Coker*, 6 A. & E. 438; *Attwood* v. *Lamont*, [1920] 3 K. B. 571, 589. The consideration should appear on the face of the deed, but may be implied (*Gravely* v. *Barnard*, L. R. 18 Eq. 518), and, if the agreement is under seal, may be proved by parol evidence: *Cherry* v. *Hemming*, 4 Ex. 631. Tests of validity of covenant.

(2) The restraint must be no more than reasonably necessary to protect the business of the covenantee: *Morris* v. *Saxelby*, [1916] 1 A. C. 688, 707; *British Concrete Co.* v. *Schelff*, [1921] 2 Ch. 563, 576. What is reasonable in this respect depends on the general circumstances of the case (*Badische, &c., Fabrik* v. *Schott*, [1892] 3 Ch. 447, 451), and largely also on the nature of the contract, which may either be one of service or for the sale of a business, *e.g.*, on dissolution of partnership. In a contract of service the test of reasonableness is more strictly applied than in the case of a sale of goodwill. In the former case a covenant is not enforceable if directed against competition *per se*, but only if directed to prevent an employee, after his period of service, from taking unfair advantage of a knowledge of the employer's trade connection or trade secrets: *Mason* v. *Provident, &c., Co.*, [1913] A. C. 724; *Eastes* v. *Russ*, [1914] 1 Ch., at p. 490; *Morris* v. *Saxelby*, [1916] 1 A. C. 688, 708; *Hepworth, &c., Co.*, v. *Ryott*, [1920] 1 Ch. 1, 12; *Attwood* v. *Lamont*, [1920] 3 K. B., at p. 586 *et seq.*; *Dewes* v. *Fitch*, [1920] 2 Ch., at pp. 166, 185; affirmed, [1920] 2 A. C. 158. Competition *per se*.

The following is an epitome of most of the material decisions upon this part of the subject:

(i) The covenant must be limited to the business effectively carried on by the covenantee during the covenantor's service: *Beetham* v. *Fraser*, 21 T. L. R. 8; *Bromley* v. *Smith*, [1909] 2 K. B. 235; *Caribonum Co.* v. Nature of business.

—— yrs after he shl have left such service (*c*), follow, use, or carry on at —— afsd, or within —— miles thof, the profes-

Le Couch, 109 L. T. 385, 587; *Whitmore* v. *King*, 87 L. J. Ch. 647; *Great Western, &c., Dairies* v. *Gibbs*, 34 T. L. R. 344; cf. *British Concrete Co.* v. *Schelff*, [1921] 2 Ch. 563 (covenants on sale of a business). A restriction not to carry on any business at all, or the business of a store (*Morse* v. *Fowler*, 44 Sol. J. 89), or not to "enter into any business arrangement in competition with" the business of the covenantee, is void, however limited as to time and place or as to persons: *Homer* v. *Ashford*, 3 Bing. 322, 326; *Baker* v. *Hedgecock*, 39 Ch. D. 520; *Ehrman* v. *Bartholomew*, [1898] 1 Ch. 671; *Morris* v. *Ryle*, 26 T. L. R. 678; and see *Perls* v. *Saalfeld*, [1892] 2 Ch. 149, where the covenantee was made arbiter as to whether the business competed or not. The covenant must be further limited to the particular department or branch of the employer's business in which the employee has in fact obtained knowledge of the employer's trade connection or trade secrets: *Leetham* v. *Johnstone-White*, [1907] 1 Ch., at p. 327; *Caribonum Co.* v. *Le Couch* (*supra*); *Forster* v. *Suggett*, 35 T. L. R. 87; *Clarke* v. *Solomon*, 36 T. L. R. 759; *Attwood* v. *Lamont*, [1920] 3 K. B. 571; and the covenant is not enforceable if the employee is not in a position to carry away the employer's trade secrets or to solicit his customers: *Ropeways, Ltd.* v. *Hoyle*, 88 L. J. Ch. 446; as where he is a junior reporter (*Leng* v. *Andrews*, [1909] 1 Ch. 763), or a grocer's assistant (*Pearks* v. *Cullen*, 28 T. L. R. 371), or a cashier (*Great Western, &c., Dairies* v. *Gibbs*, *supra*). Methods of office management and general business organisation will not be regarded as trade secrets: *Leng* v. *Andrews*, *supra*; *Morris* v. *Saxelby*, [1916] 1 A. C. 688.

Class of customers.

(ii) A covenant not to solicit customers of the covenantee must be limited to customers existing at the date of the covenant or during the period of the covenantor's service, and will be void if extending to all customers at any time: *Baines* v. *Geary*, 35 Ch. D. 154; *Konski* v. *Peet*, [1915] 1 Ch. 530; but see *Dubowski* v. *Goldstein*, [1896] 1 Q.B. 478; *Lewis* v. *Durnford*, 24 T. L. R. 64.

Space.

(iii) Whether the area of operation of the restraint is reasonable depends largely upon the amount of influence which the employee has been able to acquire over the employer's customers. A former employee cannot be restrained from trading outside the effective range of the employer's business activity: *Mallam* v. *May*, 11 M & W. 653; *Stuart* v. *Halstead*, 55 Sol. J. 598; *Great Western, &c., Dairies* v. *Gibbs*, 34 T. L. R. 344; nor indeed outside the particular area in which he has acquired influence over the employer's customers: *Mason* v. *Provident, &c., Co.*, [1913] A. C. 724, 731; *Clarke* v. *Solomon*, 36 T. L. R. 759; and not even within the area of his former employment if the employer's customers are attracted to him solely by reason of his personal skill, and not as a result of influence acquired by him by means of special opportunities enjoyed during his period of service: *Dewes* v. *Fitch*, [1920] 2 Ch., at pp. 181–182; *Attwood* v. *Lamont*, [1920] 3 K. B., at p. 592; *Bowler* v. *Lovegrove*, [1921] 1 Ch. 642, 651. Distance must be measured in a straight line: *Mouflet* v. *Cole*, L. R. 8 Ex. 32. The following distances have been held reasonable: in a solicitor's business, London and 150 miles around: *Bunn* v. *Guy*, 4 East, 190 (sale of goodwill), and the City of London, Middlesex, and Essex: *May* v. *O'Neill*,

(*c*) See *Palmer* v. *Mallet*, 36 Ch. D. 411.

sion, practice, or business of a physician, surgeon, accoucheur, or apothecary, either in his own name, or in the name or

44 L. J. Ch. 660; in a dentist's business, London: *Mallan* v. *May*, *supra*; in an accountant's business, England: *Isitt* v. *Ganson*, 43 Sol. J. 744 (partners); and in sales of patented inventions, the whole of Europe, or at least the United Kingdom: *Leather Cloth Co.* v. *Lorsont*, L. R. 9 Eq. 345; *Lamson, &c., Co.* v. *Phillips*, 91 L. T. 363. On the other hand, "in any of the towns or places in England or Scotland in which the covenantees might have been practising:" *Mallan* v. *May*, *supra*; and "within 600 miles from London or Westminster" (*Price* v. *Green*, 16 M. & W. 346), are instances of unduly wide limits. See also *Beetham* v. *Fraser*, 21 T. L. R. 8, and, in the case of an advertising business, *Stuart* v. *Halstead* (*supra*), and, in the case of a newspaper, *Leng* v. *Andrews*, [1909] 1 Ch. 763. There is no absolute rule against a restraint entirely unlimited as to space if the nature of the trade requires it: *Bryson* v. *Whitehead*, 1 Sim. & Stu. 74; *Leather Cloth Co.* v. *Lorsont* (*supra*); *Caribonum Co.* v. *Le Couch*, 109 L. T. 385, 587; or if it is otherwise necessary for the protection of the covenantee: *Nordenfeldt* v. *Maxim-Nordenfeldt Co.*, [1894] A. C. 535, *per* Lord Macnaghten; *Underwood* v. *Barker*, [1899] 1 Ch. 300; *Lamson, &c., Co.* v. *Phillips* (*supra*); *White* v. *Wilson*, 23 T. L. R 469; *Continental, &c., Co.* v. *Heath*, 29 T. L. R. 308; and see *Att.-Gen. of Australia* v. *Adelaide S.S Co.*, [1913] A. C., at p. 795; but see *Dowden* v. *Pook*, [1904] 1 K. B. 45; *Leetham* v. *Johnstone-White*, [1907] 1 Ch. 322; *Stuart* v. *Halstead* (*supra*); *Nevanas* v. *Walker*, [1914] 1 Ch. 413; *Ropeways, Ltd.* v. *Hoyle* 88 L. J. Ch. 446.

Time.

(iv) The restraint may be unlimited as to time (*i.e.*, practically for the life of the covenantor) if reasonably necessary for the protection of the covenantee: *Hitchcock* v. *Coker*, 6 A. & E. 348; *Jacoby* v. *Whitmore*, 32 W. R. 18; *Haynes* v. *Doman*, [1899] 2 Ch. 13; *Hood, &c., Stores* v. *Jones*, 81 L. T. 169; *Dewes* v. *Fitch*, [1920] 2 Ch. 159; but see *Leng* v. *Andrews*, [1909] 1 Ch. 763; *Eastes* v. *Russ*, [1914] 1 Ch. 468. A limit of time may, however, be necessary in the absence of any other limit: *Davies* v. *Davies*, 36 Ch. D. 359; *Badische, &c., Fabrik* v. *Schott*, [1892] 3 Ch. 447.

Name.

(v) A covenant not to carry on business under a particular style or name is void if its effect would be seriously to prejudice the covenantee in earning his living to the extent to which his abilities would otherwise entitle him to do: *Hepworth, &c., Co.* v. *Ryott*, [1920] 1 Ch. 13, 28; *aliter* in the case of the sale of a business: *Vernon* v. *Hallam*, 34 Ch. D. 748.

Reasonableness in interests of public.

2. The restraint must be reasonable with reference to the interests of the public (*i.e.*, in no way injurious to the public). A restraint reasonable as between the parties will be regarded as *primâ facie* reasonable with reference to the interests of the public, but may be shown to be otherwise: *Att.-Gen. of Australia* v. *Adelaide S.S. Co.*, [1913] A. C., at pp. 795, 797, and cases there cited; *Morris* v. *Saxelby*, [1916] 1 A. C., at pp. 707, 708.

Burden of proof.

3. What is reasonable is a question for the Judge, not the jury: *Dowden* v. *Pook*, [1904] 1 K. B. 45; *United, &c., Co. of Canada* v. *Brunet*, [1909] A. C., at p. 341. The Courts are disposed to put a reasonable construction upon a covenant which, taken literally, would be too wide: *Mills* v. *Dunham*, [1891] 1 Ch. 576; *Perls* v. *Saalfeld*, [1892] 2 Ch. 149; *Whitmore* v. *King*, 87 L. J. Ch. 647. Upon the question of reasonableness as between the parties, the burden lies upon the covenantee to establish special circumstances

names of any other pson or psons, & either directly or indirectly, And shl not durg such period, enter into the ser-

which render the covenant reasonably necessary for his protection: *Goldsoll* v. *Goldman*, [1914] 2 Ch., at p. 610; *Great Western, &c., Dairies* v. *Gibbs*, 34 T. L. R. 344; *Attwood* v. *Lamont*, [1920] 3 K. B., at pp. 587–589, where the authorities are discussed; *Bowler* v. *Lovegrove*, [1921] 1 Ch., at p. 650. As to what is necessary to establish such special circumstances, see *North Western Salt Co.* v. *Electrolytic, &c., Co.*, [1914] A. C. 461, 470; *Morris* v. *Saxelby*, [1916] 1 A. C. 688, 715. The burden of proving that a restraint which is reasonable as between the parties is injurious to the public lies on the party so alleging. *i.e.*, the covenantor: *Att.-Gen. of Australia* v. *Adelaide S.S. Co.*, [1913] A. C., at p. 796; *Morris* v. *Saxelby*, *supra*, at p. 708.

Assignment of benefit of covenant.

4. The benefit of a restraining covenant is assignable, and will pass under a sale of the goodwill: *Jacoby* v. *Whitmore*, 32 W. R. 18; *Showell* v. *Winkup*, 60 L. T. 389; *Leetham* v. *Johnstone-White*, [1907] 1 Ch., at p. 327; *Whitmore* v. *King*, 87 L. J. Ch. 647; and does not cease on the death of the covenantee: *Smith* v. *Hawthorn*, 76 L. T. 716; *Automobile, &c., Ltd.* v. *Sayers*, 101 L. T. 419; *Hinkins* v. *Alder*, 50 Sol. J. 258; but may perhaps cease if the business as carried on by the covenantee or a successor ceases to exist: *Townsend* v. *Jarman*, [1900] 2 Ch. 698; *Dewes* v. *Fitch*, [1920] 2 Ch. 159, 188.

Severability of covenants.

5. The terms of agreements in restraint of trade may be severable; and terms have in many cases been enforced where they were so independent of the unreasonable terms as to amount to a separate covenant for the protection of a separate business, and could be severed without their meaning being affected: *Mallam* v. *May*, 11 M. & W. 653; *Rogers* v. *Maddocks*, [1892] 3 Ch. 346; *Dubowski* v. *Goldstein*, 1896] 1 Q. B. 478; *Underwood* v. *Barker*, [1899] 1 Ch. 300, 304; *Bromley* v. *Smith*, [1909] 2 K. B. 235; *Continental Tyre Co.* v. *Heath*, 29 T. L. R. 308; *Nevanas* v. *Walker*, [1914] 1 Ch. 413, 423; *Goldsoll* v. *Goldman*, [1915] 1 Ch. 292, 299; but not otherwise: *Baker* v. *Hedgecock*, 39 Ch. D. 520; *Perls* v. *Saalfeld*, [1892] 2 Ch. 149; *Attwood* v. *Lamont*, [1920] 3 K. B. at pp. 577, 593; *British Concrete Co.* v. *Schelff*, [1921] 2 Ch. 563. But with regard to service agreements the present trend of judicial opinion appears to be that, where the covenant as a whole exceeds what is reasonable, the reasonable terms should be severed and enforced only in cases where the excess is trivial or merely technical and not part of the main covenant, and that the Court ought not to aid an employer who has imposed an unreasonable covenant by carving out such a covenant as would have been reasonable: *Mason* v. *Provident, &c., Supply Co.*, [1913] A. C. 724, 745; *Goldsoll* v. *Goldman*, [1914] 2 Ch. 603, 613; *Hepworth, &c., Co.* v. *Ryott*, [1920] 1 Ch. 1, 12; *Attwood* v. *Lamont*, [1920] 3 K. B. 571, 591, 593 *et seq.*, where the authorities are discussed.

Wrongful dismissal.

6. An employee ceases to be bound by a restraining covenant if he has been wrongfully dismissed: *General Billposting Co.* v. *Atkinson*, [1909] A. C. 118; or if the employer is unable to perform his part of the contract, as in the case of the winding up of a company: *Measures, Ltd.* v. *Measures*, [1910] 2 Ch. 248; and as to voluntary liquidation, see *Midland, &c., Bank* v. *Attwood*, [1905] 1 Ch. 357; *Reigate* v. *Union, &c., Co.*, [1918] 1 K. B. 592. As to what constitutes a breach of covenant against carrying on the

vice (*a*) of any pson or psons other than the sd A. & B., or one of them, as assistant or orwise in, or in relation to, any such profession, practice or business as afsd within the limits afsd, and shl not durg the period afsd endeavour or attempt, directly or indirectly, to induce any pson or psons to cease from employg the sd A. & B., or either of them, in the way of their or his profession, practice, or business, or to induce any pson or psons within the limits afsd, so to employ any pson or psons other than the sd A. & B., or one of them. IN WITNESS, &c.

X.

AGREEMENT *between a* MANUFACTURER *and a* TRAVELLER, *with* PROVISION *for an* ULTIMATE PARTNERSHIP.

Parties.

PARTIES, A., of, &c., manufacturer (hrinar called the employer), 1. B., of, &c., commercial traveller (hrinar called the traveller), 2. WHBY IT IS MUTUALLY AGRD as follows :—

Engagement as traveller for a term.

1. THE traveller shl enter into the service of the employer as traveller for him in the business of a —— manufacturer, carried on by him at —— afsd, for the period of —— yrs from

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business of a solicitor, see *Edmundson* v. *Render*, [1905] 2 Ch. 320 ; *Woodbridge & Sons* v. *Bellamy*, [1911] 1 Ch. 326 ; *Freeman* v. *Fox*, 55 Sol. J. 650 ; *Dewes* v. *Fitch*, [1920] 2 Ch. 159 ; affirmed, [1921] 2 A. C. 158 ; of a house agent, *Hadsley* v. *Dayer-Smith*, [1914] A. C. 979 ; of an auctioneer and estate agent, *Bowler* v. *Lovegrove*, [1921] 1 Ch. 642 ; and of other businesses, see *Stuart* v. *Diplock*, 43 Ch. D. 343 ; *Fitz* v. *Iles*, [1893] 1 Ch. 77 ; *Drew* v. *Guy*, [1894] 3 Ch. 25 ; *Ramoneur* v. *Brixey*, 55 Sol. J. 480 ; *Lovell & Christmas* v. *Wall*, 27 T. L. R. 236 ; *Wartski* v. *Meaker*, 58 Sol. J. 339. As to a covenant not to practise at a certain place unless specially invited, see *Portsmouth* v. *Seward*, 45 Sol. J. 594.

7. As to the effect of a restraining covenant where the employee is an infant, see *post*, p. 161.

(*a*) As to the effect of a covenant not to become "interested" in a business, see *Smith* v. *Hancock*, [1894] 2 Ch. 377 (the case of a wife with separate estate carrying on the prohibited business) ; *Gophir Diamond Co.* v. *Wood*, [1902] 1 Ch. 950 ; *Cory* v. *Harrison*, [1906] A. C. 274 ; *Cavendish* v. *Tarry*, 52 Sol. J. 726 ; *British Concrete Co.* v. *Schelff*, [1921] 2 Ch. 563, 573 ; "not to practise," *Sewell* v. *Wright*, 50 Sol. J. 223 ; *Roberston* v. *Willmott*, 25 T. L. R. 681 ; and "not to set up in practice," *Roberston* v. *Buchanan*, 90 L. T. 390.

the —— day of —— 19— (*b*), subjt to the genl control of the employer.

Traveller to devote whole time (*c*).

2. The traveller shl serve the employer diligently & accordg to his best abilities in all respts, & shl devote the whole of his time, attention, & energies to the pformce of his duties as such traveller, & shl not, either directly or indirectly, alone or in ptnp, be connected with or concerned in any other business or pursuit whatsr, durg the sd term of —— years.

To keep accounts.

3. The traveller shl, subjt to the control of the employer, keep pper books of acct, & make due & correct entries of the price of all goods sold, & of all transactions & dealgs of & in relation to the sd business.

Salary.

4. The fixed salary of the traveller shl be the sum of £—— per week for the first yr, payable by the employer weekly from the commencemt of the sd service on the —— day of ——, & on every succeedg Saturday, & £—— per week for the second yr, & £—— per week for the third yr, payable weekly in like mner, from the commencemt of such respective yrs.

Commission (*d*).

[**5.** *Add clause giving traveller a percentage on gross returns. See Clause* **4**, *Precedent V., saying,* " of the sd business in

(*b*) The term should commence from the first day of the business year. As to the rights and liabilities of commercial travellers, see 52 Sol. J. 144. The engagement of the traveller for a fixed term does not in itself imply an agreement that the business itself shall continue for that term, *Rhodes* v. *Forwood*, 1 App. Cas. 256; *Brace* v. *Calder*, [1895] 2 Q. B. at p. 263; *Lazarus* v. *Cairn Line of Steamships*, 56 Sol. J. 345; but where in a contract with an employee express provisions are made requiring the continuance of the business, or, as in clause **11** of the above precedent, giving him a right to a continuing benefit, a condition that his rights under the contract shall cease in events not expressly provided for will not be implied: *Turner* v. *Goldsmith*, [1891] 1 Q. B. 544; *Ogdens* v. *Nelson*, [1905] A. C. 109; *Lazarus* v. *Cairn Line of Steamships, sup.*; *Reigate* v. *Union, &c., Co.*, [1918] 1 K. B. 592. As to the difference between loss of salary and loss of opportunity to earn commission, see *Re R. S. Newman, Ltd.*, [1916] 2 Ch. 309.

(*c*) This provision cannot be enforced by injunction if the agreement comes to an end: *Ehrman* v. *Bartholomew*, [1898] 1 Ch. 671; but see *Robinson & Co., Ltd.* v. *Heuer*, [1898] 2 Ch. 451.

(*d*) As to the right of the traveller or his executors to commission on orders received after his dismissal or death from customers introduced by him under an agreement for commission based on that footing, see *Kelly* v. *Croft*, 14 T. L. R. 348, 543, and the cases there cited, *Gerahty* v. *Baines*, 19 T. L. R. 554; Bowstead on Agency, 5th ed., 196; *Barrett* v. *Gilmour & Co.*, 6 Com. Cas. 72; *Wilson* v. *Harper*, [1908] 2 Ch. 370; *Marshall* v. *Glanville*, [1917] 2 K. B. 87; *Levy* v. *Goldhill*, [1917] 2 Ch. 297; *Cramb* v. *Goodwin*, 35 T. L. R. 477.

London & the suburbs, includg thrin a circuit of —— miles' radius measured from the General Post Office, King Edward Street," *or otherwise as the case may be.*]

[**6**. *Yearly accounts, see* p. 25.]

7. The reasble travellg expses & hotel bills of the traveller incurred in connection with the business of the employer shl be pd by the employer [borne by the sd pties in eql moieties], & the employer shl from week to week pay to the traveller [one half of] the sd travellg expses & hotel bills in addition to his fixed salary. The employer shl provide a horse & carriage for the use of the traveller, & in the event of any damage thereto, the loss shl be borne by the pties hto equally. Travelling expenses (*e*).

8. The traveller shl deliver over to the employer all letters & correspondence in any mner relatg to the business of the employer immedly upon the rect throf, & shl use his utmost influence to induce customers & others to address directly to the employer all correspondence relatg to the sd business. Letters and correspondence.

9. The traveller shl not take or accept any orders for, or sell or offer to sell goods at prices less than those appearg in the [published] lists of the employer witht the sanction of the employer. Traveller not to undersell.

10. *Provision for absence of traveller from unavoidable cause, &c., see* p. 38.

11. At the expiron of the sd period of —— yrs, the employer shl take the traveller into ptnp with him in his sd business, for the term of —— yrs from such expiron if both pties shl so long live, & give him one eql fourth share of the net gains & profits of the sd business durg the first —— yrs of such term, & one eql third share durg the residue throf, the employer providg the requisite capital for carryg on the sd business, & a pper deed of ptnp shl be entered into betn the sd pties, any question as to the terms whrof shl be settled by arbitron under the clause hrinar contained. Partnership at the end of term.

Add provisions, if intended, for terminating agreement by notice (*f*). *See Precedents V. and VII. and Arbitration clause. See* Arbitration.

In witness, &c.

(*e*) Another plan is to agree the travelling and other expenses at a fixed sum payable weekly.

(*f*) As to determination of the agreement by notice and otherwise, see *ante*, p. 26.

XI.

AGREEMENT *under* SEAL *between a* FIRM *of* TRADERS *and an* AGENT *for the* SALE *of* GOODS. PROVISIONS *for Payment of* COMMISSION *for determining* AGENCY, *and for restraining* AGENT *from carrying on a similar* BUSINESS, *and other* CLAUSES. FULL FORM (*g*).

Parties. THIS INDRE made the —— day of —— between A of &c., B. of &c. & C. of &c., carrying on business in ptnp together as ——, at, &c., under the firm name of A. & Co. of the one pt. and D. of &c. *agent* (hrinar called the agent)

Recitals. of the other pt. Whas in this indre the expression "successors in business" in relation to the sd firm of A. & Co. means any one or more of the sd A., B. & C., who after any change or changes in the constitution of the sd firm by the death or retiremt of a ptner or ptners, or the admission of a new ptner or ptners shl either alone or in ptnp carry on the sd business [or any branch throf (*a*)] under the firm name of A. & Co. & his or their ptners or ptner (if any) for the time being in the sd business. And the expression "the ppals" means A. & Co. or their successors in business. And whas the agent has agrd with A. & Co. to become the agent of the ppals in London for the sale of —— manufactured or supplied by them upon the terms & in mner hrinar mentd:

Mutual covenants. NOW THIS INDRE WITNESSETH, that it is hby mutually agrd by & betn the sd pties hto as follows:

Firm to supply goods (*c*). **1.** THE ppals shl, from time to time durg the term of —— yrs from the —— day of —— next [last past] (*b*) (if the agent shl so long live), [ship], consign, & supply at their own costs & charges to the agent with as little delay as may be after they shl have received from him a notice or order in writg for the same (unless they shl be prevented by some just & sufficient cause), such

(*g*) As to agreements of this nature, see the Factors Act, 1889; Goodeve P. P., 5th ed., 81.

(*a*) See *Eaton* v. *Western*, 9 Q. B. D. 636.

(*b*) It will be convenient that the accounts of the agency should be settled in every year in time to allow of their incorporation in the accounts of the firm.

(*c*) See *Reigate* v. *Union, &c., Co.*, [1918] 1 K. B. 592.

quantities & descriptions of —— or other goods or merchandise wch are now, or shl for the time being be manufactured or dealt in by the ppals, as the agent shl require, *or*, " as will keep up a stk in the hands of the agent to the value of £——."

To be disposed of by agent.

2. The agent shl, durg the term afsd, receive all such goods & merchandise as shl be consigned or supplied to him by the ppals as afsd, & shl use his best endeavours to sell & dispose of the same to the best advantage, & for the best prices that can be obtained for the same, not being less than such prices, (if any) as may from time to time be fixed by the ppals, & either for ready moy or to psons of good credit: And shl in the meantime keep the same deposited in warehouses or other pper places, & shl twice in every yr, as hrinar mentd, duly acct with the ppals for, & pay over or remit to them all moys, bills, notes, & secs, wch shl have been received by, or come to the hands of the agent, from or in respt of the sale or disposon of the sd goods or merchandise, after deductg the expses & allowces & other deductions hrinar mentd.

Proceeds to be remitted half-yearly.

Provision for omission to supply goods.

[**3.** If the ppals shl at any time durg the subsistce of this agrmt from any cause whatever, fail or omit to supply the agent with such goods or merchandise as afsd within —— weeks after receivg a notice or order in writg from him for the same, the agent may thrupon pchase or obtain from any other pson or psons such goods or merchandise as he shl require, & wch the ppals shl so have failed to supply: Provd that the agent shl duly acct, at the times & in mner hrinar provd, for all the net profits to arise from the sale throf, after deductg the first cost or price of the same, expses, commission & such other deductions & allowces as hrinar mentd.]

Expenses.

4. The ppals shl allow or pay to the agent so long as he shl continue to be their agent under this agrmt, all reasonable expses for carriage or delivery of the sd goods or merchandise, & for books, stationery, & postage, & all other reasonable & customary expses attendg the sale throf, or orwise incurred by him in respt of the premes [save as hrin orwise provd]:

Commission.

And shl also allow or pay him a commission or salary at the rate of £—— p.c. upon the [net] proceeds wch shl arise from the sale of all such goods or merchandise as afsd [after deductg expses], such commission to be chargeable upon moys actually received only, & not upon outstandg debts: [And in case such commission shl, upon the makg up of any half-yrly

acct as hrinar mentd (*d*); be found to amt to a less sum than £—— for the precedg half-yr, then the agent shl be entitled to retain or be paid such a further sum in addon to the sd commission as will make the same up to such sum of £——]: And it is hby agrd that the commission & allowce afsd, & all sums of moy whatsr wch may from time to time be or become due or owg from the ppals to the agent, shl be a lien or charge (*e*) upon all goods, merchandise, & ppty of the ppals, wch shl, for the time being, be in the posson or custody of the agent (*a*).

Lien.

Clerks.

5. The agent shl, out of his sd salary or allowce, provide & pay all clerks & assistants who may be required by him for the management of the sd agency business.

Accounts.

6. The agent shl keep all usual & pper books of acct of & concerng all goods & merchandise received by him from the ppals [or pchased or obtained by him from any other pson or psons under clause **3** hrof], & the parlars of the sales throf, & of all sums of moy, bills of exchange, & other secs received by him, & of all credit given on acct of any such goods, & of all other matters & transons concerng the premes, & the sd books & accts, & all bills, notes, secs for moy, letters, & other writgs relatg to the matters afsd in the posson or under the control of the agent, shl be carefully preserved by him (damage by fire, or other inevitable accident only excepted) & shl at all reasble times be open to the inspection of the ppals, or any member of their firm, or their agents, who shl have full liberty to make copies or extracts of or from the same or any of them.

Inspection.

Settlement of accounts.

7. The ppals & agent shl, on the —— day of —— next, & thrafter durg the continuce of this agrmt, on the —— day of —— & the —— day of —— in every yr (unless prevented by sickness or other unavoidable cause, & then as soon as may be after the removal of such cause), settle accts resptg the sale & disposon of the sd goods & the other matters afsd. [And upon

(*d*) If only a comparatively short period will elapse before the first account directed to be taken by Clause 7, add here "not, however, includg the acct hrinar directed to be taken upon the —— day of —— next."

(*e*) This will not make the document a bill of sale within the Bills of Sale Act, 1882, see *Morris* v. *Delobbel-Flipo*, [1892] 2 Ch. 352. As to bills of sale, see the note in Vol. 2, *sub tit.* Mortgages; Goodeve P. P., 5th ed., pp. 99 *et seq.*

(*a*) The goods or property must, however, be acquired in the same capacity in which the lien is claimed; *Houghton* v. *Matthews*, 3 Bos. & P. 485; *Dixon* v. *Stansfield*, 10 C. B. 398.

the settlemt of accts, intt at the rate of £—— p.c. p.a. may be chged by or against the agent upon all unpd balances, & for the ppose of such half-yrly settlemt of accts a full & parlar statemt in writg shall previously to every such day as afsd be prepared by the agent showg all rects & paymts & other dealgs & transactions concerng the premes, & every such acct or statemt, when approved & signed by all pties, shl be bindg upon them & every of them, & shl not afterwards be opened unless some manifest error or omission shl be discovered thrin within the space of twelve calendar months thrafter, in wch case the same shl be rectified.]

Monthly statements.

8. The agent shl on the first day of every month transmit to the ppals a statemt in writg of the goods wch may have come to his hands & of all orders received by him, & the parlars of all sales & other transactions wch shl have taken place durg the precedg month.

Agent to accept bills.

9. The agent shl accept (*b*) & duly pay all such bills of exchange as may be drawn upon him by the ppals, to the amt of the balance he may have in hand, on having three days' previous notice given to him throf.

Agency not to be assigned.

10. The agent shl not at any time witht the consent in writg of the ppals assn, transfer, or in any mner make over the sd agency or this psnt contract to any pson or psons whomsr: And the agent, his clerks, agents, & servants, shl not, nor shl any of them, durg the continuce of the sd agency, witht such consent as last afsd, directly or indirectly, sell or dispose of any —— or other goods or merchandise of the descron afsd, for or on acct of the agent or any pson or psons whomsr, other than the ppals. The agent, his clerks, agents, & servants, shl not, nor shl any of them, durg the continuce of the sd agency, witht such consent as afsd, directly or indirectly (*d*), buy, sell, or deal in ——, or any of the goods or

Agent not to carry on other business of the same kind (*c*).

(*b*) The agent must be careful to sign in his representative capacity, see Bills of Exchange Act, 1882, s. 26, and the cases cited in Byles on Bills of Exchange thereon; and see *Chapman* v. *Smethurst*, [1909] 1 K. B. 927.

(*c*) See *ante*, p. 23, note (*b*).

(*d*) An agent is in a fiduciary position towards his principal, and must account to him in respect of any secret profits he makes during the course of his agency: see *Imperial, &c., Association* v. *Coleman*, L. R. 6 H. L. 189; *Kimber* v. *Barber*, L. R. 8 Ch. 56; *Williamson* v. *Hine*, [1891] 1 Ch. 390; *Gluckstein* v. *Barnes*, [1900] A. C. 240. A sub-agent stands in the same position: *Powell* v. *Evan Jones & Co.*, [1905] 1 K. B. 11.

articles wch are now or shl for the time being be usually dealt in by the ppals, or carry on the business or trade of, &c., [carry on any business or trade whatsr,] for or on acct of the agent or any other pson or psons whomsr, other than the ppals(*e*) [but the agent shl devote his whole time & attention to the sd agency business]: And the ppals, their clerks, servants, & agents, shl not, nor shl any of them, durg the period afsd, witht the consent in writg of the agent, supply any such goods or merchandise as afsd, whether for resale or orwise, to any pson or psons whomsr, who shl reside or carry on business in the town of —— afsd, or within the distance of —— miles from *some public building or other place in the town*, other than the agent.

Agent not to carry on any other business.

Principals not to employ any other agent in same place.

Limit as to credit to be given.

11. The agent shl not give credit to any pson or psons whomsr for a longer period than ——, nor for any goods or merchandise exceedg the value of £——, witht the consent in writg of the ppals, & shl not give credit for any goods or merchandise to any pson or psons to whom they shl have forbidden him to give credit.

Not to pledge (*a*).

12. The agent shl not witht the consent in writg of the ppals pledge any goods or merchandise consigned or supplied to him as afsd.

Agent not to compound debts, &c.

13. The agent shl not, witht the consent of the ppals, release or compound any debt, claim, obligon, or secy relatg to the premes, nor abandon or compromise any action, suit, or other proceeding for compellg the paymt or satisfon of any such debt, claim, or obligon, or realisg or enforcg any such secy as afsd, nor exte nor do any instrumt or thing whby any such debt, claim, secy, or obligon may or might be discharged, diminished in value, or prejudicially affected, until the same shl have been fully pd or satisfied.

To obey directions of principals.

14. The agent shl at all times durg the continuce of the sd agency obey & observe all reasble directions & instructions wch may be given to him by the ppals, touchg the sale or disposon of the sd goods, or orwise relatg to the premes, & in the absence of special instructions shl act in such mner as he shl deem most beneficial to them.

(*e*) The agent must account to the principals for any profits made on sales in breach of this provision: *Nitedals* v. *Bruster*, [1906] 2 Ch. 671.

(*a*) See *Oppenheimer* v. *Attenborough & Son*, [1908] 1 K. B. 221; *Weiner* v. *Harris*, [1910] 1 K. B. 285.

15. The agent shl, upon the final windg up of the sd agency business, deliver up to the ppals all such of the goods & merchandise afsd, as shl remain unsold, & also all books & accts wch shl have been kept by the agent as afsd, & all documts & writgs relatg to the matters afsd, wch shl be in his posson or power. To deliver up goods, &c., on winding up of agency.

16. Either the ppals, or the agent, may at any time durg the sd term of —— yrs terminate the sd agency (*b*) by givg —— calr months' notice in writg to the other party, or leavg such notice at, or sending the same by post or orwise to the usual or last known place of abode or business of such party addressed to him or them: [Provd that if either of the sd pties shl at any time wilfully neglect or refuse to observe or pform any of the agrmts or stipulons afsd then the other party may terminate the sd agency upon givg one week's notice in writg to him or them, or leavg or sendg the same as afsd.] And any notice hrinbfe required to be given to the ppals may be addressed to their firm by its then name or style, or to any member throf, & upon the expiron of the period of any such notice as afsd, the sd agency shl accordgly absolutely cease, & the accts of the sd agency business shl thrupon be adjusted & settled betn the sd pties up to the day on wch such notice shl have expired, in the same mner as if the sd agency had expired by lapse of time. Power to terminate agency.

17. The agent shl in nowise be answerable for any loss or damage wch may happen to any such goods or merchandise as afsd, or wch may orwiset be incurred in or about the matters afsd, unless the same shl be occasioned by his wilful neglect or default. Agent not to be answerable for loss.

18. For further effectuatg this argmt, A. & Co. hby appt the agent to be the atty of A. & Co. & do hby covt with the agent that if & so often as & immedly after any change shl take place in the firm of A. & Co., the successors in business of the sd firm will appt the agent to be the atty of such successors in business in the firm name to demand, sue for, recover, & receive, & give effectual rects & discharges for all such sum or sums of moy as shl be due from any pson or psons in —— or elsewhere, for or on acct of any goods or Power of attorney to agent (*c*).

(*b*) See other provisions for determining agreements, *ante*, Precedents V. and VII, and the notes thereto.

(*c*) See also *post*, pp. 202 *et seq.*

merchandise sold by the agent as afsd, & genlly to do all such acts, & things as may be necy or pper in relon to the matters afsd (but subjt nevertheless to the stipulons & agrmts heinbfe contd as to compromisg claims & orwise), with power to the agent to appt a substitute or substitutes under him for any of the pposes last afsd, or for any matters relatg to the sd agency business, with such powers as he shl think fit, & such apptmt at pleasure to revoke, & A. & Co. hby undertake that the ppals shl ratify & confirm whatsr the agent or his substitute or substitutes shl lawfully do or cause to be done in & about the premes.

Arbitration.

19. If any question or dispute shl at any time durg the continuance of the sd agency or afterwards arise btn the agent, his exs or ads & the ppals, with respt, &c., —— *Arbitration clause. See* Arbitration.

In witness, &c.

XII.

GUARANTEE *to* Bankers (*b*). Variations *where the* Principal Debtors *are a* Firm.

To Messrs. ——.

Guarantee.

In conson of your [openg an acct with &] makg advances or

(*b*) As to the difference between guarantee and indemnity, see *Guild* v. *Conrad*, [1894] 2 Q. B. 885; *Re Denton*, [1904] 2 Ch. 178; *Shaw* v. *Royce, Ltd.*, [1911] 1 Ch. 138; and see *post, sub tit.* "Indemnity". The bankers are not bound to disclose to the surety facts tending to the discredit of the debtor: *National Provincial Bank* v. *Glanusk*, [1913] 3 K. B. 335; or the amount of the principal's indebtedness: *Royal Bank of Scotland* v. *Greenshields*, [1914] S. C. 259. An employer stands in a different position in regard to a fidelity bond: *London General Omnibus Co.* v. *Holloway*, [1912] 2 K. B. 72.

Continuing guarantees.

This and the following Precedent are illustrations of what are generally known as continuing guarantees. Continuing guarantees are those the consideration for which is supplied from time to time, and therefore divisible as distinguished from those the consideration for which is entire and indivisible, moving from the person to whom the guarantee is given once and for all, as is the case where one person takes another into his service or accepts another as lessee whose integrity or responsibility as the case may be is guaranteed: see *Lloyds'* v. *Harper*, 16 Ch. D., at p. 319; *Re Crace*, [1902] 1 Ch., at p. 738.

Determination by notice.

It is particularly important that this distinction should be borne in mind in framing the provisions for cesser of a guarantee, the rule being that, in the absence of agreement to the contrary (*Egbert* v. *National Crown Bank*, [1918] A. C. 903), a continuing guarantee is revoked as to future transac-

orwise givg credit (*c*) to A., of, &c., [& B., of, &c., carryg on business at, &c., under the style or firm of A. & Co] I hby guarantee to you the paymt [on demand] of all moys wch [are now (*d*) or] shl at any time be due to you from the sd A. or his

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tions by notice of revocation given by the surety or by notice of the surety's death or lunacy given by his personal representatives: *Coulthart* v. *Clementson*, 5 Q. B. D. 42; see *Lloyds* v. *Harper*, *supra*; *Wingfield* v. *De St. Croix*, 35 T. L. R. 432; *Bradford Old Bank* v. *Sutcliffe*, [1918] 2 K. B. 833; or, in the case of such a guarantee being given to a firm or to a third person in respect of the transactions of a firm, by a change in the constitution of either firm: P. Act, 1890, s. 18; but the mere transfer of an existing and ascertained debt, whether by novation or assignment, does not discharge the surety: *Bradford Old Bank* v. *Sutcliffe*, *supra*, at pp. 841, 842. On the other hand, a guarantee for which the consideration is entire and indivisible is not, apart from express stipulation, determinable *instanter* by notice of revocation on the part of the surety, nor will it be determined either by the death of the surety or the fact of his death coming to the knowledge of the obligee: *Re Crace*, *supra*.

Where it is intended that a special notice of definite duration shall be necessary in order to determine a continuing guarantee notwithstanding the death of the guarantor, express provision to this effect must be inserted: *Re Silvester*, [1895] 1 Ch. 573. It is not sufficient for this purpose that the guarantee is expressed to be determinable by notice of definite duration to be given by the guarantor: *Coulthart* v. *Clementson*, 5 Q. B. D. 42; *Ascherson* v. *Tredegar Dry Dock, &c.*, [1909] 2 Ch. 401.

As to the appropriation of payments made by the debtor after the death of the guarantor, see *Re Sherry*, 25 Ch. D. 692, and cf. *Deeley* v. *Lloyds' Bank*, [1912] A. C. 756. As to the guarantee becoming barred by the Statute of Limitations, see *Parr's Banking Co.* v. *Yates*, [1898] 2 Q. B. 460; *Ascherson* v. *Tredegar Dry Dock, &c.*, [1909] 2 Ch. 401. If a surety undertakes to pay the debt on demand no right of action accrues against him, and the Statute does not commence to run in his favour, until a demand for payment has been made: *Bradford Old Bank* v. *Sutcliffe*, [1918] 2 K. B. 833.

As to guaranteeing the debts of an infant, see 55 Sol. J. 699, and see further on the law of guarantees and suretyship, the notes to *Rees* v. *Berrington*, and *Dering* v. *Winchelsea*, in 2 White & T. L. C.; Goodeve P. P. 5th; and *Re Melton*, [1918] 1 Ch., at pp. 59, 60.

As to stating consideration.

(*c*) The importance of correctly stating the consideration (one of many instances of the strictness with which suretyship agreements are construed in favour of the surety), is illustrated by *Burton* v. *Gray*, L. R. 8 Ch. 932, where a guarantee expressed to be given in consideration of the bankers lending the principal debtor £1,000 for seven days, was held to fail by reason of this condition not having been strictly fulfilled, although the debtor had within the seven days been allowed to overdraw his account to an amount approaching £1,000. If the consideration is the forbearance of the creditor to sue, this will be good if time is in fact given, although there is no express contract to do so: *Crears* v. *Hunter*, 19 Q. B. D. 341; see also *Clarke* v. *Birley*, 41 Ch. D. 422.

(*d*) See *Morrell* v. *Cowan*, 7 Ch. D. 151.

repves [A. & Co] on the genl balance of his [their] acct with you so nevertheless that the liability of me or my repves hrunder shl not at any time exceed the sum of £—— (*e*) with intt thron after the same shl have become due as hrinar provd (*f*):

To be continuing.

And I declare that this guarantee shl be a continug guarantee, & shl not be considered as wholly or partially satisfied by the paymt or liquidon at any time or times hrafter

As to stating limit of guarantee.

(*e*) Care must be taken to avoid ambiguity in limiting the amount; otherwise the question may arise whether the instrument is to be construed as a complete guarantee to secure a portion of the overdraft, *i.e.* the portion which does not exceed the specified limit; or, as a partial guarantee to secure the whole overdraft whatever it may amount to, but limited as to the amount for which the guarantor is in any event to become liable. The former is the *primâ facie* construction which in doubtful cases will be adopted in favour of the guarantor: *Hobson* v. *Bass*, L. R. 6 Ch. 792; *Gray* v. *Seckham*, L. R. 7 Ch. 680; except where at the time of the guarantee the overdraft already exceeds the limit specified: *Ellis* v. *Emmanuel*, 1 Ex. D. 157. The latter construction gives an advantage to the Bank in case of the bankruptcy of the drawer, and if intended should be clearly expressed as in *Re Rees*, 17 Ch. D. 98; *Re Sass*, [1896] 2 Q. B. 12.

(*f*) The following is a full form, which may be substituted, *mutatis mutandis*, for the clause in the text to this point:—

Full form of guarantee.

"In conson, &c., I, the undersigned B., of, &c., hby guarantee to you the paymt of all moys wch are now or shl from time to time be due to you from the sd A. or his repves, alone, or jointly with any other pson or psons, or Co, either on acct current or for moy advced or pd, or in respt of bills, drafts, notes, or other negotiable secs made, drawn, accepted, advised, endorsed or pd by you or on your acct for the sd A. or his repves alone or jtly as afsd, and also of all moys wch you may from time to time be or become liable to pay in respt of any bills, letters of credit, circular notes, or any other dealg or transon on acct or for the accommodon or benefit of the sd A. or his repves, alone or jtly as afsd, inclusive of intt, commission, & other usual bankers' charges, & all costs & expses incurred by you in respt of the premes, or this guarantee, & inclusive also of intt at any rate not exceedg (unless orwise agrd) the Bank of England rate for the time being, or five p.c. p.a. if the Bank rate shl be below that rate, to be calculated with half-yrly rests, accdg to the usual custom of bankers, although the relon of customer & banker may have ceased, so as the liability of me or my repves hrunder shl not exceed at any one time the sum of £——, with intt thron after the same shl have become due as hrinar provd.

of any sum or sums of moy for the time being due upon such genl balance as afsd, but subjt to the above-mentd limitation in amt of liability hrunder shl extend to cover & be a secy for all future sum & sums of moy at any time due to you thron, notwithstdg any such paymt or liquidon : And I further declare that you may grant time or other indulgce to or compound with the sd A. or his repves [A. & Co], or any pson or psons or Co liable on any bill, note, or other secy or guarantee held by you witht affectg this guarantee, & that all dividends, composons, & paymts received by you from the sd A. [A. & Co], or any other pson or psons or Co so liable, or his or their este, shl be taken & applied as paymts in gross, witht any right on the pt of me or my repves to stand in your place in respt of, or to claim the benefit of any such dividends, composons, or paymts, or any secy held by you until you shl have received the full amt of all your claims against the sd A. or his repves [A. & Co] wch are covered by this guarantee, & that subjt as afsd this guarantee shl apply to & secure any ultimate balance wch shl remain due to you, & that you may enforce this guarantee, notwithstdg that any bills or other instrumts covered by it may be then in circulon or outstandg (*b*) or that you may then have any other guarantee for the sd balce : And I further declare that this guarantee shl not be affected by my death, but shl remain in force until one calendar month after notice in writg to determine or discontinue the same shl have been given to you by me or my repves (*d*) & shl continue to be bindg, notwithstdg any changes wch may from time to time take place in the ptners [in the sd firm of A. & Co or] in your firm : And I further agree that any acct settled or stated by or betn you & the sd A. or his repves [A. & Co], or admitted by [him or] them, may be adduced by you & received as conclusive evidence against me & my repves of the

Power to give time and compound (*a*).

Death of guarantor or change in partners not to invalidate guarantee (*c*).

Account settled between customer and bank to be binding.

(*a*) An express stipulation that the surety is not to be discharged by the creditor giving time to or compounding with the debtor is valid and effectual, and prevents any such act from discharging the surety : *Cowper* v. *Smith*, 4 M. & W. 519; *Union Bank of Manchester* v. *Beech*, 3 H. & C. 672; *Perry* v. *National Provincial Bank of England*, [1910] 1 Ch. 464; *Egbert* v. *National Crown Bank*, [1918] A. C, 903.

(*b*) As to this clause, see *ante*, p. 54, n. (*e*), and compare the guarantees in *Re Rees* and *Re Sass* there cited.

(*c*) See *ante*, p. 52, n. (*b*).

(*d*) Mere notice of death is not sufficient to determine the guarantee under this clause : *Re Silvester*, [1895] 1 Ch. 573 ; *ante*, p. 52, n. (*b*).

balance or amt thereby appearg due from the sd A. or his repves [A. & Co] to you, & shl not be disputed or questioned by me or my repves. And I further agree that the amt at any time recoverable by you against me or my repves under this guarantee shl be due & payable to you at the expiron of —— days after notice (*e*) requirg such paymt shl have been delivered or sent through the post by registered letter in the usual way by you or your solors to me or my repves witht the necessity of naming them. And if not then fully paid shall thenceforth carry interest as to so much thereof as shall for the time being remain unpaid at the rate of £5 per cent. per annum until the whole be pd. As witness my hand this —— day of ——.

Amount guaranteed to be due on notice.

XIII.

GUARANTEE *by* Directors *of a* Company *to* Bankers *for limited amounts* (*a*).

To Messrs. ——.

Guarantee. In conson of your agreeing to grant to the X. Co Ltd, at our request, a credit overdraft to the extent of £——, we, the undersigned, hby guarantee to you the paymt of all moys wch shl at any time be due from the sd X. Co to you on the genl balce of their acct with you not exceeding £ —— (such balance to include all intt, commission, & other chges & expses wch you may in the course of your business as bankers charge in respt of any advces or discounts made to them or on their acct, or for keepg their sd acct, with you), & we hby agree that this guarantee shl be a continuing guarantee to the extent at any one time or times hrafter of any sum or sums of moy for the time being due upon such genl balance within the limit afsd : And further that this guarantee shl be in force & subsistg whether the whole of the sd sum of £—— shl be actually advced by you or not (*b*), & shl continue to be binding notwithstdg any change wch may from time to time take

(*e*) As to the death of the principal debtor before notice, see *Rickaby* v. *Lewis*, 50 Sol. J. 113.

(*a*) See notes to the last Precedent.

(*b*) See *Burton* v. *Gray*, L. R. 8 Ch. 932.

place in the ptners in your firm. *Power to give time & compound, ante*, p. 55. PROVD always & we expressly stipulate that we shl resply be liable on this guarantee only to the extent of the sums set opposite to our respective names in the schdle hto : AND further that if, durg the continuance of this guarantee, any of us shl die or shl cease to be a Diror or Dirors of the sd X. Co Ltd, & if that Co shl be unable to substitute a guarantor or guarantors in his or their place who shl be satisfactory to you, then the sd Co may pay to you the amt wch in the sd schdle shl be set opposite to the name or names of the pson or psons who shl so die or cease to be a Diror or Dirors as afsd, & such paymt shl be accepted by you in full satisfon of all claims against such pson or psons in respt of this guarantee, Dated, &c.

Limit of liability (*c*).

Provision for death, &c., of any guarantor (*d*).

The Schedule.

A. £——;
B. £——, &c.

(*c*) Under this clause, the guarantors are liable to contribute in proportion to the named sums: *Ellesmere Brewery Co.* v. *Cooper*, [1896] 1 Q. B. 75; but one guarantor cannot claim contribution from the others until he has paid more than his due proportion of the entire debt: *Stirling* v. *Burdett*, [1911] 2 Ch. 418; and where a third person is guarantor against the default of the principal debtor and his surety, no right to contribution arises; see *Re Denton*, [1904] 2 Ch. 178.

(*d*) In accordance with the usual practice, the Bank is not bound under this agreement to allow the overdraft for any definite time. This being the case, each surety remains under a present liability at any time during the continuance of the overdraft to pay his proportion of the amount guaranteed, and may compel the principal debtor, *i.e.* the company, to relieve him from his liability by paying off the debt without the necessity of showing that the Bank has refused to sue the company; see *Ascherson* v. *Tredegar Dry Dock, &c., Co.*, [1909] 2 Ch. 401; distinguished in *Bradford* v. *Gammon*, [1925] 1 Ch. 132. But the terms of the guarantee may be such as to negative any accrued or definite liability until the determination of the guarantee in accordance with such terms: *Morrison* v. *Barking Chemicals Co.*, [1919] 2 Ch, 325; and see *Re Ledgard*, 66 Sol. J. 405. The provision in the text enables each guarantor to obtain his release on payment by the company of that part of the debt guaranteed by him.

In view of the decision in *Ascherson* v. *Tredegar Dry Dock, &c., Co.*, no supplementary agreement between the co-sureties as directors in regard to the part payment of the debt appears now to be necessary.

XIV.

AGREEMENT *between an* AUTHOR *and a* PUBLISHER *for* SALE *of* COPYRIGHT *and* PUBLICATION *of a* BOOK (*e*).

PARTIES, A., *author*, 1. B., *publisher*, 2.

Sale of copyright. WHAS the sd A. has written a book to be entitled ——: NOW IT IS HBY MUTUALLY AGRD that the sd B. shl pchase the copyright of the same on the followg terms :—

Expenses. **1.** THE sd B. shl bear the whole expse & risk of the paper & printg the sd book, & the publicon throf.

Payment to author. **2.** THE sd B. shl pay to the sd A. the sum of £—— for the first edition of the sd book, when —— copies shl have been sold, & for the second & for every future edition the sum of £—— to be pd three months after the day of publicon, no edition to exceed —— copies, & —— copies of each edition to be supplied gratis to the author, and any number of copies at trade price.

New editions. **3.** THE sd A. shl revise any new edition of the sd work, & correct the proofs.

Provision for death, &c., of author. **4.** IN case of the death of the sd A. or his inability to edit the sd work, the sd B., his exs, ads, or assns, shl be at liberty to employ such editor as he or they may think fit, & after deductg the paymts to such editor, the balance (if any) of the sd sums of £——, or £——, as the case may be, shl be pd to the sd A. or his repves.

Power to waste first edition. **5.** IN case —— copies of the first edition of the sd book shl not be sold within —— yrs from the date of publicon, the sd

(*e*) See Copyright Act, 1911, s. 5 (2); *University of London Press* v. *University Tutorial Press*, [1916] 2 Ch. 601, 612. Apart from any express provision, the benefit of such an agreement cannot be assigned without the author's consent: *Hole* v. *Bradbury*, 12 Ch. D. 886; and the same rule applies whether the author makes such an agreement with other individuals or with a company: *Griffith* v. *Tower, &c., Co.*, [1897] 1 Ch. 21. If an agreement of this kind provides for the payment of royalties to the author, and also permits the publisher as assignee of the copyright to re-assign to a successor in business, the royalties payable must be charged on the proceeds or produce of the copyright in order to render liable a second assignee who was not a party to the first assignment: *Barker* v. *Stickney*, [1919] 1 K. B. 121; *Macdonald* v. *Eyles*, [1921] 1 Ch. 631. As to the distinction between an assignment of copyright and the right of printing and publishing, see *Re Jude*, [1907] 1 Ch. 651; and as to the effect of a provision securing to the publisher an option of acquiring the exclusive right of publishing the author's next book, see *Macdonald* v. *Eyles*, *supra*.

B. shl be at liberty to waste the same, & shl not be liable to pay the afsd sum of £—— to the sd A.

In witness, &c.

XV.

AGREEMENT *between* Owner *and* Lessee *of* Two Adjoining Properties *respecting the interference of* New Buildings *with* Ancient Lights (*a*).

Parties, A. 1, B. 2. Whas the sd A. is the owner in fee simple of a certain plot of land in & on the south side of X. court, in the parish of, &c., formerly the site

Recital of A.'s title to land formerly

(*a*) As to easements of light and the right to the access of air, see 24 L. Q. R. 120, 247. There is no right of action in respect of interference with ancient lights unless such interference is substantial, *Colls* v. *Home & Colonial Stores, Ltd.*, [1904] A. C. 179; *Cowper* v. *Millburn*, 52 Sol. J. 316; *Ambler* v. *Gordon*, [1905] 1 K. B. 417; *Higgins* v. *Betts*, [1905] 2 Ch. 210; *Andrews* v. *Waite*, [1907] 2 Ch. 500; *Jolly* v. *Kine*, [1907] A. C. 1; *Davis* v. *Marrable*, [1913] 2 Ch, 421; *Paul* v. *Robson*, 83 L. J. P. C. 304; *Hammerton* v. *Dysart*, [1916] 1 A. C. 57, 69, 84; *Litchfield-Speer* v. *Queen Anne's Gate Syndicate*, [1919] 1 Ch. 407; *Charles Sermon & Co.* v. *Bradford Corporation*, [1922] 2 Ch. 737; but interference may be substantial though it does not lower the value of the premises: *Martin* v. *Price*, [1894] 1 Ch. 276. Where access of light to a building (*Harris* v. *De Pinna*, 33 Ch. D. 238) has been actually enjoyed (*Cooper* v. *Straker*, 40 Ch. D. 21; *Smith* v. *Baxter*, [1900] 2 Ch. 138) for twenty years next before the commencement of an action in which the right is disputed (*Hyman* v. *Van Den Berg*, [1908] 1 Ch. 167) without interruption (*Smith* v. *Baxter*, [1900] 2 Ch. 138), the right thereto becomes indefeasible unless the enjoyment was pursuant to a contract in writing (*Easton* v. *Isted*, [1903] 1 Ch. 405; *Mallam* v. *Rose*, [1915] 2 Ch. 222), and can be acquired against a servient owner incapable of granting it: *Jordeson* v. *Sutton, &c., Gas Co.*, [1899] 2 Ch. 217, or by one of two lessees, holding under a common landlord, against the other lessee and the landlord: *Morgan* v. *Fear*, [1907] A. C. 425; *Richardson* v. *Graham*, [1908] 1 K. B. 39. See the Prescription Act, 1832, ss. 3 & 4; Carson R. P., 2nd ed. 10; Tudor L. C. Conv., notes to *Sury* v. *Pigot*. The Act applies only to windows or apertures in the nature of windows: a prescriptive right to light through an ordinary doorway cannot be acquired: *Levet* v. *Gas, Light, &c., Co.*, [1919] 1 Ch. 24. Time begins to run in the case of an unfinished house from the time when the exterior walls with window spaces and the roof are completed: *Collis* v. *Laugher*, [1894] 3 Ch. 659.

Agreements as to lights.

Frequently a small nominal rent is agreed to be paid for permission to continue an encroachment with the object of preventing an easement from being acquired. The payment of rent under a *parol* agreement of this nature is not an interruption of the user under s. 3 of the above Act (*Plasterers' Co.* v. *Parish Clerks' Co.*, 6 Ex. 630), *secus* as to a *right of way*,

the site of buildings. of houses numbered, &c., in X. court, but wch houses have lately been pulled down, and the sd A. is also tenant,

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under s. 2 (*Gardner* v. *Hodgson's, &c., Brewery Co.*, [1903] A. C. 229); but an agreement in writing for payment of the rent may be an interruption though no rent is in fact paid (*Hyman* v. *Van den Berg*, [1907] 2 Ch. 516), though it has been suggested that the non-payment of the rent for twenty years may afford some evidence that the agreement has been put an end to (per James and Thesiger, L.JJ., *Bewley* v. *Atkinson*, 13 Ch. D. at pp. 293, 296). The payment of a rent by way of acknowledgment, though not essential, is useful as a means of ensuring that the tenant for the time being in possession shall have notice that the enjoyment of the easement is permissive only; for which purpose the demand of payment should be regularly made on the person in actual occupation; see *Easton* v. *Isted*, [1903] 1 Ch. 405.

The agreement is sometimes made between owners or tenants of adjoining property and sometimes between the owner of one property and the tenant of another. See Prec. XVI., *infra*, and note thereto. It is useful as a *modus vivendi*, but cannot in any case be relied upon otherwise than as a temporary expedient, for either party or his successors in title may determine it at will. It does not therefore constitute an incumbrance upon the property: see *Greenhalgh* v. *Brindley*, [1901] 2 Ch. 324; *Smith* v. *Colbourne*, [1914] 2 Ch. 533, and is not susceptible of registration as a land charge under the Land Charges Act, 1925.

An agreement to grant a legal easement which is ineffectual to create such easement but operates nevertheless to restrict the user of the land over which it is intended to be granted must be registered as a land charge under the last mentioned Act in order to bind the land in the hands of a purchaser.

As to the effect of rebuilding on the same or an altered site as regards the right to ancient lights, see *Heath* v. *Bucknall*, L. R. 8 Eq. 1.; *Staight* v. *Burn*, L. R. 5 Ch. 163; *Aynsley* v. *Glover*, L. R. 18 Eq. 544; 10 Ch. 283; *National, Insce. Co.* v. *Prudential Assurance Co.*, 6 Ch. D. 757; *Ecclesiastical Commissioners* v. *Kino*, 14 Ch. D. 213; *Newson* v. *Pender*, 27 Ch. D. 43; *Bullers* v. *Dickinson*, 29 Ch. D. 155; *Scott* v. *Pape*, 31 Ch. D. 554; *Greenwood* v. *Hornsey*, 33 Ch. D. 471; *Pendarves* v. *Monro*, [1892] 1 Ch. 611; *Smith* v. *Baxter*, [1900] 2 Ch. 138; *Ankerson* v. *Connelly*, [1907] 1 Ch. 678; *Andrews* v. *Waite*, [1907] 2 Ch. 500. An abstraction of light coming over adjoining property acquisced in by the owner of the dominant tenement does not entirely negative his right to an easement of light over other adjoining property: *Bailey & Son, Ltd.* v. *Holborn & Frascati, Ltd.*, [1914] 1 Ch. 598. As to the effect of a verbal agreement to grant an easement where there has been part performance, see *McManus* v. *Cooke*, 35 Ch. D. 681, and the L. P. Act, 1925, s. 55 (*d*). As to the difference between the right to enjoy light for ordinary and extraordinary purposes, see *Colls* v. *Home & Colonial Stores, Ltd.*, [1904] A. C. 179; *Ambler* v. *Gordon*, [1905] 1 K. B. 417.

An injunction may still be granted in a *quia timet* action to restrain a threatened illegal obstruction of ancient lights: *Litchfield-Speer* v. *Queen Anne's Gate Syndicate*, [1919] 1 Ch. 407; but the Court has no power to award damages in lieu of granting an injunction in such a case: *Slack* v. *Leeds Industrial, etc. Society, Ltd.*, [1923] 1 Ch. 431.

under an agrmt for a lease for a term of —— years from the —— day of ——, of another plot of land in & on the south side of X. court afsd, formerly the site of houses numbered, &c., in X. court afsd, wch houses have also lately been pulled down: AND WHAS the backs of the sd houses in X. court abutted on the backs of other houses situate on the north side of Y. street, in the sd parish of —— (the two ppties being divided by a division or party fence wall), wch houses in Y. street, with other ppty, are held by the sd B. under a lease for the residue of a term of —— yrs commencg on the —— day of ——, & are underlet partly upon lease & ptly to yrly tenants: AND WHAS the sd A. has pulled down the sd houses on the south side of X. court, with the view of erectg on the site throf other bldgs of greater height & magnitude, & he intends to cover over or partly to cover over the site of the back yards of the sd houses so that (as alleged by the sd B., though not admitted by the sd A.), the ancient lights of the sd houses in Y. street wd be interfered with, & the free access of light & air thereto (as htofore) wd be materially obstructed: AND WHAS plans & elevons of the houses so pulled down by the sd A. & of the new bldgs &

B.'s title to adjoining land.

Proposed new buildings by A.

Plans agreed upon.

As to the measure of damages for interference with ancient lights, see *Griffith* v. *Clay & Sons*, [1912] 2 Ch.. 291; *Wills* v. *May*, [1923] 1 Ch. 317.

Right to air.

The right to access of air, in the sense of a general flow of air, is not an easement within s. 2 of the Prescription Act, 1832: *Webb* v. *Bird*, 10 C. B. (N.S.) 282, 13 ib. 841; *Chastey* v. *Ackland*, [1895] 2 Ch. 389; and such a right cannot be acquired either by common law prescription from immemorial user: *Bryant* v. *Lefever*, 4 C. P. D. 172, or by the presumption of a lost grant: *Harris* v. *De Pinna*, 33 Ch. D. 238; *Chastey* v. *Ackland*, *supra*. But the right to access of air through a defined channel or aperture may be acquired in either of the last mentioned methods: *Chastey* v. *Ackland*, *supra*, and probably also under the Prescription Act: *Dalton* v. *Angus*, 6 A. C. at p. 798; *Bass* v. *Gregory*, 25 Q. B. D. at p. 483; *Simpson* v. *Godmanchester Corpn.*, [1897] A. C., at p. 709. Further, the right to access of air to a defined aperture or for a particular purpose may be acquired by covenant either express or implied from the circumstances of the grant of the land: *Aldin* v. *Latimer, Clark & Co.*, [1894] 2 Ch. 437; *Chastey* v. *Ackland*, [1895] 2 Ch. 389; *Cable* v. *Bryant*, [1908] 1 Ch. 259; *Schwann* v. *Cotton*, [1916] 2 Ch. 459, 469; *Westwood* v. *Heywood*, [1921] 2 Ch. 130.

Right to support.

A right of support to a building from the soil of the servient tenement (*Dalton* v. *Angus*, 6 App. Cas. 740), or from buildings upon it (*Lemaître* v. *Davis*, 19 Ch. D. 281; *Selby* v. *Whitbread*, [1917] 1 K. B. 736, 751) can be acquired under the Prescription Act, 1832, as well as by express or implied grant: see also *Simpson* v. *Godmanchester Corpn.*, [1897] A. C. 696, 709.

improvemts so as afsd to be erected & extd by the sd A. have been submitted to Mr. —— the surveyor of the sd B., & signed by such surveyor & by Mr. —— the architect of the sd A., & annexed to this agrmt, & the plans & elevons of the sd new bldgs & improvemts so signed are hrinar for brevity referred to as "the sd plans" : AND WHAS for obviatg applicon by the sd B. for restraing the sd A. from proceeding with the sd proposed bldgs & improvemts, & for fixg the terms on wch the consent of the sd B. to the exon throf is intended to be given, the sd pties hto have entered into the arrangemt hrinar appearg : NOW in conson of the premes the sd A. & B., HBY MUTUALLY AGREE as follows :

Introductory recital.

A. not to acquire any more extensive right to light in respect of new buildings.

1. THE sd A. shl not, by reason of the erection & exon of the proposed bldgs & improvemts, acquire as against the sd B. or the psons claimg under him any further or more extensive right to the access & use of light to & for such bldgs than he, the sd A., is entitled to in respt of the sd houses & bldgs lately standg on the south side of X. court afsd, & any access or use of light to or for the sd proposed new bldgs more extensive than that wch was enjoyed as of right to or for the sd houses & bldgs lately standg on the south side of X. court afsd, shl so far as regards the sd B. & the psons claimg under him be deemed permissive & enjoyed by consent under this agrmt, so as to prevent the sd A. or the psons claimg under him from havg any legal or equitable right, claim, or remedy against the sd B. or the psons claimg under him, in respt of any obstruction or detrimt to such addonal access or use of light, occasioned by any bldgs or improvemts upon, or other reasonable use of the sd houses or any adjacent ppty of the sd B.

A. to permit erection of similar buildings on adjoining land.

2. THE sd A. & the psons claimg under him will not, in respt or under colour of his psnt or any future rts to the access & use of light, by any means seek to restrain or prevent the sd B. or the psons claimg under him from doing or causg to be done, or bring any action for damages or institute or promote any other legal proceedings in respt of his or their doing or causg to be done any of the things followg, & the sd A. (so far as depends upon him), hby authorises & consents to, & agrees that the psons claimg under him shl authorise & consent to the doing of the same (that is to say) :—*First*, Erectg on the site of the sd houses in Y. street, or any pt throf (not being within a distance of —— feet from the boundary wall of the two pties), any bldgs not exceedg in height the bldgs proposed to

be erected by the sd A. as shown on the sd plans. *And secondly,* Coverg over & alterg the psnt back yard, sheds, & offices of the houses in Y. street, or the sites throf, or any pt throf, up to the sd boundary wall in the way in wch the back yards of the houses in X. court are intended to be covered over & altered as shown in the sd plans, or in any other way not more prejudicial, as regards the access of light to the X. court ppty of the sd A.

Consent by B. to new buildings.

3. In conson of the sd agrmts on the pt of the sd A. the sd B. & the psons claimg under him will not by any means seek to restrain or prevent the sd A. or the psons claimg under him from erectg & executing the sd proposed bldgs & improvemts accordg to the sd plans or bring any action for damages, or institute or promote any legal proceedings in respt throf, but so far as depends on him he, the sd B., hby authorises & consents to the erection & exon of the sd proposed bldgs & improvemts accordg to the sd plans.

A. to give notice of agreement to persons claiming under him.

4. The sd A. & the psons claimg under him will, by insertg notice of the stipulons hrinbfe contd in favour of the sd B. & the psons claimg under him, in leases & other munimts, & by such other reasonable means as circes may require or admit (& as well in compliance with any special reqt in that behalf on the pt of the sd B. or the psons claimg under him as witht such special reqt), use his best endeavours to cause the sd stipulons to run with the sd X. court ppty, & bind all psons interested thrin as owners, lessees, occupiers, or orwise (*z*).

In witness, &c.

XVI.

AGREEMENT *for* Preventing *the acquisition of an* Easement *in respect of* New Windows *overlooking a neighbour's land* (*a*). Variation *where one of the* Parties *is only a* Lessee.

Recital of title.

Parties, A., *one owner,* 1. B., *other owner,* 2. Whas the sd A. is the owner in fee simple of the house No. —— in ——

(*z*) This agreement should be under seal. Apart from the provision in the text, the right to build in the manner stipulated in the agreement so as at any time to obscure the access of light to the "X. Court" property is as effectually annexed to the "Y street" property as if that right had been reserved upon a conveyance of the former by the owner of the latter property. See L. P. Act, 1925, s. 187.

(*a*) See note, *ante,* p. 59. In a contract for the sale of a house there is

street, in the parish of, &c., & the sd B. is the owner in fee simple of the house No. —— in the same street; And whas the sd A. has recently opened two new windows in his sd house overlookg the back yard of the sd house of the sd B.: NOW it is HBY MUTUALLY DECLARED & AGRD as follows :—

New windows opened by A.

Enjoyment of light to window to be deemed permissive.

1. The sd windows shl be deemed to have been opened with the express permission & consent of the sd B., & the enjoymt during the continuance of this agreement by the sd A., & the psons claimg under him, of the access & use of light or air by means of such windows to the house & premes in which the

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no implied warranty that *de facto* windows are ancient lights. The following clauses are adapted to the case of one of the parties being only a lessee :—

Variation in recitals. Lease to B.

Recite that A. " is the owner in fee simple of a piece of bldg ground situate, &c.," *and that B.* " is lessee for an unexpired term of —— yrs of an adjoing piece of ground on wch he has erected a house & other bldgs known as, &c., the windows whrof overlook the sd ppty of the sd A.," *& that* " the sd A. has threatened to obstruct the access of light & air to the sd house & bldgs of the sd B. through or by means of the windows afsd. NOW in order to avoid any disputes IT IS HBY MUTUALLY DECLARED & AGRD betn the pties hto as follows :—

Enjoyment of light and air to windows to be deemed permissive.

1. The sd. B. hby for himself & his assns. acknowes that the access of light & air to the sd house & bldgs through or by means of the windows afsd is had & enjoyed by him & during the continuance of this agrmt shl continue to be had & enjoyed by him & the psons claimg under him solely by the permission & sufferce of the sd A. or the psons claimg under him & so that no easemt or right in respt throf shl during the continuance of this agrmt be acquired by prescription or orwise by him the sd B. or the psons claimg under him.

Lease not to be assigned, &c., without notice.

2. The sd B. & the psons claimg under him shl not assn or underlet the sd house & premes or allow his or their leasehold intt thrin to expire or cease by surr, forfeiture or orwise witht givg written notice throf to the sd A. or the psons claimg under him.

Access of light and air not to be interrupted without notice.

3. The sd A., & the psons claimg under him, shl not obstruct or intercept the access of light & air to the sd house & bldgs of the sd B. witht givg three calr months' notice of his or their intention in that behalf to the pson in posson throf."

same have been opened as afsd, shl be deemed to be with the express permission & consent of the sd B. or the psons claimg under him, to the intent that the sd A., & the psons claimg under him shl not during the continuance of this agrmt acquire any easemt or right in respt throf.

Covenant to pay nominal rent as acknowledgment (*b*).

[2. The sd A. or the psons claimg under him shl pay to the sd B. or the psons claimg under him, by way of acknowemt for the permission hby given to keep open the sd windows so long as this agrmt shl continue the yrly rent or sum of one shillg on the —— day of —— in every yr if demanded.**]**

Rescission.

3. Either of them, the sd A. & B., or the psons claimg under either of them may at any time hrafter determine this agrmt by givg to the other of them, or the psons claimg under him, a notice in writg in that behalf. Such notice shl be deemed to be suffit if given or sent by post addressed to the owner or occupier for the time being (not being a mere caretaker or servant) of the house & premes belongg to the pson agnst whom the agrmt is sought to be determined, provided that the rect throf shl be acknowed by such owner or occupier or by some pson claimg to be such (*bb*).

A. then to wall up windows (*c*).

4. In the event of this agrmt being determined as afsd, the sd A., or the psons claimg under him, shl forthwith at his or their own expse wall or block up the sd windows.

In witness, &c.

XVII.

AGREEMENT *between* Adjoining House-Owners *as to the* Continuance *of* Encroachments (*d*).

Parties.

Parties, A., *owner of one house*, 1. B., *owner of other house*, 2.

Recital as to encroachments by B.

Whas the sd A. is the owner of a house situate, &c., & the sd B. is the owner of a piece of land adjoing thto, on wch he has

(*b*) As to an acknowledgment by payment of rent see *ante*, p. 59.

(*bb*) See the L. P. Act, 1925, s. 196.

(*c*) The assigns of A. are not bound by this covenant, and the remedy of B. on breach of it is in damages against A. or his representatives; see *post*, p. 384, note. As to the effect of a provision giving power to B. to enter and block up windows if A, after due notice, does not do so, see *Smith* v. *Colbourne*, [1914] 2 Ch. 533, 541, 543.

(*d*) As to agreements of this nature, see Prescription Act, 1832, s. 2, and *ante*, p. 59.

erected [is erectg] a house, the upper pt of the south wall of wch encroaches on the roof of the house of the sd A.; And the sd B. has affixed to the front of the sd house of the sd A. a pipe to carry off the water from the roof of his sd house: NOW it is MUTUALLY AGRD as follows:—

Encroachments to be deemed permissive.

1. The sd encroachmts of the sd south wall of the house of the sd B. & of the sd pipe shl be deemed to have been made, & the continuance hrafter of such respective encroachmts shl be deemed to be with the express licence & consent of the sd A., to the intent that the sd B. or any pson claimg under him, shl not acquire any easemt or right in respt throf.

B. to repair and make good future damage.

2. The sd B. shl at his own expse keep the sd pipe pperly cleansed & in good order, & shl make good, & compensate the sd A. for all damage wch may at any time be done to the house of the sd A. by water running from the roof of the house of the sd B., or by leakage or overflow from the sd pipe.

To remove encroachments on notice.

3. The sd B. shl pull down & remove the sd wall & pipe so far as the same resply encroach as afsd, & make good any damage occasioned thereby to the house of the sd A., within 14 days after the sd A. shl have given or left at the sd house of the sd B. a notice in writg in that behalf, & every such notice shl be sufft although not addressed to any pson by name or description.

Agreement to bind owners for time being.

Notice to be endorsed on title-deeds.

4. The respective owners for the time being of the sd houses shl have the benefit of & be bound by this agrmt, & shl be deemed to be included in each article of this agrmt, wherever the names of the sd A. & B. resply occur: And notice of this agrmt shl be endorsed on the convce to the sd B. of his sd piece of land, & on every future assurce of the sd house thron erected.

In witness, &c.

XVIII.

AGREEMENT *for* Apportionment *of* Rent *under* Lease, *where the* Reversion *of* Part *of the* Premises *has been sold to a* Public Undertaking *under the* Lands Clauses Consolidation Act, 1845 (*e*).

Parties. *Parties*, A., *lessor*, 1. B., *a Public Authority, pchasers*, 2. C., *lessee*, 3.

(*e*) See Lands C. C. Act, 1845, s. 119. Where the premises are conveyed by virtue of the Education Act, 1921, or the School Sites Acts, 1841 to 1851,

Recite lease, p. 475. AND WHAS the reversionary estate in fee simple of & in the sd house & premes, No. —— afsd, pt of the sd premes comprised in the hrinbfe recited lease, expectant

Recital of seisin.

Apportionment of rents.

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which apply to the former Act as if the local education authority were trustees or managers of a school within the meaning of the latter Acts (see the Act of 1921, s. 112), the apportionment can be made under the School Sites Act, 1849, s. 1, by agreement between the lessor or owner subject to the lease, the tenant, and the party to whom the conveyance is made, and when made is binding on all under-lessees and other persons, whether parties to the agreement or not.

An apportionment of rent made without the consent of the lessor on the assignment for value by the lessee of part of the demised premises is binding as between the lessee and his assignee and their respective successors in title: see L. P. Act, 1925, s. 190 (3); but an apportionment of rent made on the severance of the reversionary estate in land comprised in a lease or on the assignment by a lessee of part of the land comprised in his lease would not, unless concurred in by him, be binding, in the former case on the lessee, and in the latter on the lessor, who would otherwise be entitled to have it made by a jury or other competent authority: *Bliss* v. *Collins*, 5 B. & Ald. 876; *Swansea Corpn.* v. *Thomas*, 10 Q. B. D. 48. Such concurrence is however usually dispensed with, as an agreement come to between the respective owners of the severed portions of the reversion or between the respective owners after assignment of the leasehold interest in different parts of the demised premises is generally acquiesced in. As to the liability for rent of the assignee of part or of the whole after the surrender of part of the demised premises, see *Baynton* v. *Morgan* 22 Q. B. D. 74; *Mitchell* v. *Mosley*, [1914] 1 Ch. 438.

Provisions of the L. P. Act, 1925.

Sections 140, 141 and 142 of the L. P. Act, 1925, embody the statutory amendments of the common law relating to the severance of the reversionary estate of land comprised in a lease. Conditions being incapable of apportionment at common law, a severance of the reversion or the cesser of the term as regards part only of the demised premises resulted in the destruction of the conditions of re-entry contained in the lease. S. 140 (replacing s. 12 of the C. A., 1881, which applied only to leases made after 1881) provides in effect that notwithstanding the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease shall be apportioned and remain in force in like manner as if the land comprised in each severed part or as to which the term remains subsisting (as the case may be), had alone originally been comprised in the lease. The section preserves the operation, where the lease was made before 1882, of a severance of the reversionary estate or partial avoidance or cesser of the term which was effected before 1926, but is otherwise of general application. The same section (sub-s. 2) provides that "right of entry" includes a right to determine the lease by notice to quit or otherwise; but that where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may, within one month determine the lease in regard

upon the determinon of the term granted by the sd lease, is now vested in the sd B.: And whas the sd B. require for the pposes of, &c., vacant posson of the house and premes afsd, wch are delineated on the plan drawn in the margin hrof & thron coloured pink, the remr of the premes demised by the sd lease being coloured blue on the same plan: NOW IT IS HBY, psuant to the provons of the Lands C. C. Act, 1845, AGRD & DECLARED as follows, that is to say (*zz*) :—

Recital of premises being required.

Agreement.

1. The sd yrly rent of £—— shl, from the —— day of —— be apportioned in mner following, that is to say, the yrly rent of £——, pt of such yrly rent of £——, shl be the portion throf from that day payable in respt of the sd premes coloured pink on the sd plan, & the yrly sum of £——, the remr of the sd rent of £——, shl from the same day be payable in respt of the residue of the sd premes comprd in the sd lease, & wch are coloured blue on the same plan.

Costs.

2. The sd B. shl pay the costs of the sd A., as provd by the Lands C. C. Act, 1845, & (*a*) also the sum of £—— for the costs & charges of his surveyor & solor of & attendg the negotion of these psnts. *Similar provision as to C.'s costs.* In Witness, &c.

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to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.

As to the effect of an involuntary severance of the reversion created before 1882, see *Piggott* v. *Middlesex C. C.*, [1909] 1 Ch. 134.

Sections 141 and 142 (the former section replacing s. 10 of the C. A., 1881, as amended by s. 2 of the C. A., 1911, and the latter s. 12 of the Act of 1881), contain provisions for annexing the rent and the benefit of the lessee's covenants and the burden of the lessor's covenants (see *Davenport* v. *Smith*, [1921] 2 Ch. 270; *Atkin* v. *Rose*, [1923] 1 Ch. 522) to the reversionary estate in the land or the severed parts thereof notwithstanding severance; but without prejudice in either case to any liability affecting a covenantor or his estate. See *Stuart* v. *Joy*, [1904] 1 K. B. 362.

(*zz*) It is unnecessary to mention the successors in title of any of the parties to this agreement. See L. P. Act, 1925, s. 79.

(*a*) As to what costs are payable by B. under s. 82 of the Lands C. C. Act, 1845, without special agreement, see *Ex p. Buck*, 1 H. & M. 519; and generally as to the costs payable by the promoters under that section: *Re Thames Tunnel, &c., Act*, 1900, [1908] 1 Ch. 493; *Re Elementary Education Acts*, [1909] 1 Ch. 55.

XIX.

DEED *of* COVENANT *by the* OWNER *of a* PERPETUAL RENT-CHARGE *for* APPORTIONING *the same.* ENDORSED *on a* CONVEYANCE *of the lands subject to the rent-charge* (*b*).

Parties, the within named A., *owner of rent-charge,* 1; Parties.

(*b*) The apportionment of rent charges of various kinds (including by virtue of s. 192 of the L. P. Act, 1925, a charge on land by way of annuity for redemption of tithe rent-charge) may be effected by order of the Minister of Agriculture and Fisheries under the Inclosure Act, 1854, ss. 10 to 14 on the application of any persons respectively interested according to the provisions of the Inclosure Acts, 1845 to 1882, in the land and rent or in the case of charges payable for redemption of tithe rent-charge, on the application of any person interested, according to the provisions of the same Acts, in the land charged or any part thereof without the concurrence of any other person. See also as to apportionment in the case of lands taken under the Lands C. C. Act, 1845, ss. 115–118; and under the Church Building Acts, 14 & 15 Vict. c. 97, s. 27; 36 & 37 Vict. c. 50, s. 3; and as to apportionment of drainage and improvement rent-charges, 9 & 10 Vict. c. 101, ss. 44, 45; 19 & 20 Vict. c. 9, ss. 8, 10; 27 & 28 Vict. c. 114, ss. 68–71; 62 & 63 Vict. c. 46, ss. 5 and 8. There are some other powers of apportionment contained in special Acts. As to the apportionment of rent-charges.

The redemption of rent charges of the like nature (other than tithe rent-charge or a charge or other payment redeemable under the Tithe Acts, 1836–1918), and also of any rent reserved on a sale, or made payable under a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes and any compensation rent-charge created as the consideration for the extinguishment of manorial incidents may also be effected by order of the same Minister under the L. P. Act, 1925, s. 191, on the requisition of the owner of the land or of any person interested therein. The same section also provides (sub-s. 7) for the apportionment with a view to the redemption thereunder of the apportioned part of any rent-charge to which the section applies. As to the redemption of rent-charges.

By s. 70 of the L. P. Act, 1925 (replacing s. 10 of the Law of Property Act, 1859, which was passed to remedy the inconvenient doctrine that the release of part of the land charged with a rent-charge operated as a release of the whole land) it is enacted that a release from a rent-charge of part of the land charged therewith does not extinguish the whole rent-charge, but operates only to bar the right to recover any part of the rent-charge out of the land released, without prejudice to the rights of any persons interested in the land remaining unreleased and not concurring in or confirming the release. Similar words in the repealed Act were construed to mean that where the owner of the rent-charge releases part of the land without the concurrence of the owner of the other part, the whole of the rent-charge is not extinguished, but only a proportionate part of it can be recovered against the owner of the unreleased portion of the land: *Booth* v. *Smith,* 14 Q. B. D. 318; but that where the owner of the unreleased As to the partial release of land from a rent-charge.

the within named B., *owner of lands charged*, 2. WITNETH (*c*), that for apportiong the within mentd yrly rent-chge

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part of the land concurs in the release, the whole of the rent-charge is recoverable against his land: *Price* v. *John*, [1905] 1 Ch. 744. The doctrine as to a release of part of the land extinguishing the rent-charge, did not apply to a release of the land from part only of the rent-charge (Vin. Abr. "Rent," 504; 3 Cruise Dig. 301; Co. Litt. 148a, referred to in Tudor's L. C., Conv., notes to *Clun's Case*, p. 84); and the enactment above referred to does not and was not required to cover that case. An apportionment might therefore be effected (as in the alternative form given below) by a release of each portion of the land from so much of the rent as is to be borne by the other portion; but it is better that it should be effected (as in this Precedent) by way of covenant only (according to a plan which was in use to avoid the common law doctrine as to the effect of a release). It has been doubted whether an absolute covenant not to claim the rent against the land would not operate as a release (see Co. Litt. 157*b*, n.; but see Shepp. Touch. by Preston, 345); but it seems clear that a conditional covenant, as in the text, could not so operate.

As to the remedies for recovering apportioned rent-charge.

A rent-charge may be apportioned between several owners without the consent of the owner of the lands, so as to keep alive the right of each owner to distrain for his part: *Rivis* v. *Watson*, 5 M. & W. 255; Dart, 7th ed., 822; and the remedies for the recovery of a rent-charge by distress, or receipt of rents, or appointing a term, which are given by the L. P. Act, 1925, s. 121 would also, it is conceived, remain in force after apportionment (whether by severance of the land or of the rent-charge itself). An action also lies against the person answering the description of terre-tenant, that is to say, the estate owner in fee simple in all cases (*Thomas* v. *Sylvester*, L. R. 8 Q. B. 368; *Searle* v. *Cooke*, 43 Ch. D. 519; *Foley* v. *Dudley Corpn.*, [1910] 1 K. B. 317), but not a tenant for years (*Re Herbage Rents Charity*, [1896] 2 Ch. 811) nor, apparently, at the present day, a mortgagee (see *Candiff* v. *Fitzsimmons*, [1911] 1 K. B. 513, *contra*, decided under the old law) for recovery of a rent-charge or an apportioned part thereof, whether, as it seems, it be legal or equitable: *Booth* v. *Smith*, 14 Q. B. D. at pp. 320, 321; notwithstanding that the annual profits of the land are less than the rent: *Pertwee* v. *Townsend*, [1896] 2 Q. B. 129; Litt. on Tenures, s. 220. See also notes, *post*, p. 406.

A rent-charge is a rent within s. 1 of the Real Property Lim. Act, 1833 (*Asplen* v. *Pullin*, [1917] 1 K. B. 187), also within s. 1 of the Real Property Lim. Act, 1874 (*Shaw* v. *Crompton*, [1910] 2 K. B. 370), and the period within which the remedy upon a personal covenant to pay a rent-charge can be enforced is the period of twelve years mentioned in s. 1 of the last mentioned Act.

(*c*) The following form may sometimes be useful:—

"WITNETH that for apportiong the within mentd rent-chge of £150 & the remedies covts by the grantee & provons conferred by the within written indre or by statute for recoverg the same, IT IS HBY AGRD & DECLD that the sd rent-chge of £150 shl as from the —— day of —— be apportioned into two separate yrly rent-chges of £100 & £50 resply, & that

of £50, the sd A. hby covts with the sd B., in mner followg (that is to say) :—

1st. That so long as the clear yrly sum of £10, pt of the sd yrly rent-chge of £50, shl be duly & punctually pd by eql half-yrly paymts at the times at wch the sd rent-chge is payable, or within 21 days thrafter, as & for the portion of the sd rent-chge payable in respt of the land & bldgs described in the first schdle hto, by the sd B., or his successors in title to the same land, then & so often as the same shl happen the sd A. will not, nor shl his successors in title to the sd rent-chge of £50, at any time hrafter in case of the non-paymt thereof or any pt throf, distrain or enter on, or cause or procure any distress or entry to be made on the sd land descd in the sd first schdle, or any pt throf, or any bldg thron, or commce, carry on, or proseeute any action or other proceeding agst the owners, tenants or occupiers for the time being of the same land & bldgs, or any pt throf, or exercise or avail himself or themselves of any other powers or rts for recoverg or compellg paymt of the sd rent-chge of £50, or any pt throf, or in any wise interrupt or disturb the sd B., or his successors in title, or his or their tenants in the posson or enjoymt or rect of the rents & profits of the same land & bldgs, or any pt throf. Apportionment of part of rent on property in first schedule.

[And 2ndly, 3rdly, & 4thly, *similar covenants with B. in respect of the lands described in the second, third, & fourth schedules.*]

And [5thly] that he, the sd A., or his exs, or ads will at all times keep the sd B., & his successors in title to the Indemnity of

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the sd rent-chge of £100 shl as from the last-mentd day be chged exclusively on the land described in the first schdle hto & cease to be a chge on the land described in the second schdle hto. *Similar provisions as to the apportioned rent-charge of* £50. And further, that the remedies covts by the grantee & provons conferred by the sd indre or by statute for recoverg the sd rent-chge of £150 shl as from the last-mentd day be apportioned & be applicable to each of the sd rent-chges of £100 & £50 separately from the other of them instead of to the sd rent-chge of £150 & so as to be applicable to the land on wch each of the sd rent-chges of £100 & £50 as the case may be is henceforth to be separately chged instead of on the whole of the land assured by the sd indre."

property in each schedule against part of rent apportioned on the rest of the property.

respive lands & bldgs described in the sd respive schdles hto, & his & their tenants, indemnified agst all losses, costs, damages, & expses wch he or they shl or may incur by reason of any distress or entry being levied or made in or upon the sd lands & bldgs, or any pt throf, or any other proceeding being had or taken to enforce or compel the paymt of the sd rent-chge of £50, or any pt throf, contrary to the covts hrinbfe contd, or any of them.

IN WITNESS, &c.

[*Schedules.*]

XX.

FAMILY AGREEMENT *to give effect to* INTENDED WILL *not* EXECUTED.

Recitals. Death of intestate. Family. Intended will. Agreement.

THIS INDRE (*d*), made, &c., betn A., 1. B., 2. C., 3. D., 4. WHAS X., late of, &c., died on the —— day of —— intestate, leaving the sd. A, B., C., & D., his four chln & only next-of-kin him survivg: AND WHAS shortly before his death, the sd X. gave instrons to his solors for the preparon of his last will, & the same was drafted but never signed by the sd X.: AND WHAS the draft will marked Z., this day signed by all the pties hto, is admitted by them & each of them to contain the intd testy disposons of the sd X., & all the sd pties are desirous, notwg the intestacy of the sd X., to deal with & dispose of all his real & psonal este, & also the trust este comprd in a settlement dated, &c., wch by the sd will the sd X. intd to appt under a power contd in such settlent, & wch in default of such apptmt wd have devolved on the sd pties hto or some of them, under the trusts of the sd settlemt, in the same mner as the same resply wd have been dealt with & disposed of under the sd draft marked Z. if the same had

As to formalities.

(*d*) The agreement should be under seal to avoid any questions as to there being a sufficient consideration to support it (as to family arrangements, see 2 White & T., L. C., notes to *Stapilton* v. *Stapilton*, 3 Dav. Prec. 3rd ed., pt. 1, 278, note).

Agreements as to expectancies.

An agreement between two persons having expectations from a third, to divide equally whatever property may come to either of them from him, whether under his will, or intestacy, or by gift *inter vivos*, is valid: *Beckley* v. *Newland*, 2 P. Wms. 182; *Wethered* v. *Wethered*, 2 Sim. 183; *Harwood* v. *Tooke*, *ib.* 192.

been a completed documt: NOW THIS INDRE WITNETH that in conson of the premes & by way of family arrangemt, & in order to avoid questions & disputes as to the division of the real & psonal este of the sd X., & of the trust este under the sd settlemt, it is hby agrd & decld, & the sd pties hto hby mutually covt as follows :— Witnesseth. Agreement.

1. ALL the real & psonal ppty of the sd X., or so much throf as shl not be required for pposes of administration in payment of the funeral testamentary & administrative expses and debts of the sd X. and all the ppty over wch he the sd X. had under the sd settlemt a power of apptmt, shl be disposed of, divided, & dealt with in accordce with the terms of the sd documt (*e*) marked Z., & signed by the sd pties hto as afsd. Division of property.

2. ALL & every of the sd pties hto, & their respive exs, ads, & assns, shl exte all such deeds & documts, & do all such acts as may be necy or be deemed expedient to give complete effect to this agrmt, & the costs of the preparon stamping (*a*) & exon of such documts (inclusive of this agrmt) shl be deemed expses attendg the exon of the trusts & disposons decld & contd in the sd doct marked Z. Execution of deeds.

3. NONE of the said pties, or his or her exs, ads, or assns, shl either as next-of-kin or as claimg under the trusts contd in the sd settlemt in default of any exercise of the power of apptmt afsd, or in any other character bring any action or take any pcdgs agst any other pty hto, his or her exs, ads, or assns, in reference to any pt of the sd real or psonal ppty of the sd X., or the trust estate under the sd settlemt, but this shl not prejudice the rt of any party to enforce pformce of this agrmt, or of any of the terms hrof. No proceedings to be taken by any party claiming under intestacy.

4. THE sd A. shl forthwith apply for & be allowed to obtain witht opposon letters of admon to the real & psonal este & effects of the sd X., but such este & effects shl be administered & dealt with in all respects as regards the established order of applicon of assets in paymt of debts (*b*) & orwise as Administration to be obtained.

As to the advisability of independent legal advice and as to the duty of a solicitor advising young persons in cases of this kind, see Vol. 2, SETTLEMENTS (PERSONAL), note.

(*e*) A copy of the document may be included in a schedule.

(*a*) See Fin. (1909–10) Act, 1910, s. 74.

(*b*) See Administration of Estates Act, 1925, s. 34 (3), and First Schedule, Part II.

if the sd documt marked Z had been duly executed & proved as the last will & testamt of the sd X. & as if letters of admon had been granted to the said A. with the sd will annexed.

In witness, &c.

XXI.

AGREEMENT *between a* Firm *of* Traders *and their* Workpeople, *granting to the latter a* Share *in the* Net Profits *of the* Firm (*c*).

Parties.

Parties, A., B., & C., carrying on business as ——, at ——, under the style or firm of —— (hrinar called the firm) of the one pt, & the sevl psons named in the schdle hto, being clerks,

Recital of engagement.

servants, & workmen of the firm of the other pt: Whas the firm have employed, or agrd to employ, the sevl psons named in the sd schdle at the salaries or wages written opposite to their respive names in the same schdle [in the wages-book of the firm]: And whas the firm are desirous to give to the sd psons, in addon to their sd salaries or wages, & by way of further remuneron durg the current yr, such sums of moy as hrinar mentd, upon the terms that the sd psons resply shd on their pt enter into such agrmt as is hrinar expressed: NOW IT IS HBY AGRD as follows:—

That workmen are to share in net profits.

A proportionate share of net profits to be apportioned to each workman.

1. The firm will, at the annl stock-takg of the sd business in the month of ——, in the yr ——, apportion to each pson named in the sd schdle a sum of moy, wch shl bear the same proportion to one-tenth pt of the net profits of the sd business durg the precedg yr as the salary or wages pd to such pson durg the same yr shl bear to the total amt of salaries & wages pd by the firm durg the same year.

According to the certificate of the cashier.

2. The firm shl, with all convenient speed after the amt of the sd net profits has been ascertained, cause to be prepared a certfe, showg the sum apportioned to each such pson as afsd, & shl cause the same to be signed by the cashier for the time being of the firm, or such other pson as the firm may appt for

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(*c*) In connection with agreements between employers and workmen, see the Shop Clubs Act, 1902; the Workmen's Compensation Act, 1906, ss. 3, 16; see also Elliott, 8th ed., 700; and as to an agreement for payment of compensation under the latter Act, see *Horn* v. *Lords Commrs. of Admiralty*, [1911] 1 K. B. 24; *Howarth* v. *Knowles*, [1913] 3 K. B. 675; *Godwin* v. *Admiralty Commrs.*, [1913] A. C. 638; *Leaf* v. *Furze*, [1914] 3 K. B. 1068.

the ppose, & the sd certfe shl be absolutely bindg & conclusive as to the amt payable under these psnts to each such pson as afsd. The firm will pay to each such pson as afsd the sum appearg by the sd certfe to be apportioned to him immedly after the signature throf by the sd cashier, or such other pson as afsd.

Firm to have exclusive right of determining what are profits.

3. The firm shl have the sole & exclusive right of ascertaing & determing the amt of the sd net profits, & shl be entled to make allowces & deductions for intt on capital, rent, deprecion in the value of stock & plant, & bad & doubtful debts, & compenson wch the firm may have to pay under the [provons of the scheme substituted by the firm for the provons of the] Workmen's Compensation Act, 1906 (*d*), & any other allowces & deductions wch the firm may consider pper, & none of the psons named in the sd schdle shl have any rt to examine or inspect the books or accts of the firm, or to make any enquiry or investigon whatsr as to the amt of the sd net profits, or the sum apportioned to any of the sd psons, or how the same resply are made out, nor shl any of the sd psons be entitled to any share in the capital or assets of the firm nor in any way assume or claim any of the rts or powers of a ptner in the firm (*a*).

Proviso as to workmen leaving service of firm.

4. Any pson named in the sd schdle who shl leave or be dischged from the service of the firm or shl die bfe the sd stocktaking, shl not be entled to have any such sum as afsd apportioned or pd to him or his repves.

Firm may discharge workmen.

5. The sevl psons named in the sd schdle shl well & faithfully serve the firm in their respive situons, & at their respive salaries & wages as afsd, until the —— day of ——, 19—; but the firm shl have full power to dischge all or any of the sd psons at any time or times, notwg this agrmt.

Special

6. If any dispute shl at any time arise betn the firm & any

(*d*) As to the requisites of such a scheme, see *Moss* v. *Great Eastern Rly. Co.*, [1909] 2 K. B. 274; *Taylor* v. *Cripps*, [1914] 3 K. B. 989. The Workmen's Compensation Act, 1906, s. 16 (2) repeals the Acts of 1897 and 1900, and provides that the two latter Acts shall continue to apply to cases where the accident happened before the 1st July, 1907, except to the extent to which the Act is 1906 applies to those cases. As to the application of the Act to French citizens, see Workmen's Compensation Act, 1909.

(*a*) It appears proper, in this case, expressly to declare that no employé shall be a partner, but see *ante*, p. 28. See also *Ellis* v. *Ellis & Co.*, [1905] 1 K. B. 324, where it was held that the widow of a working foreman, who was a partner, could not claim compensation under the Act of 1897.

arbitration clause.

one or more of the sd psons named in the sd schdle as to the pper meang or constron of this agrmt, or anythg done or to be done in psuance hrof, or in anywise relatg hto, the mre in dispute shl be referred to the solor or solors for the time being of the firm, whose decision shl be final & conclusive, & absolutely bindg on all pties: PROVD ALWAYS that this clause shl not be deemed to limit or affect the rts reserved to the firm, or to extend the rts conferred on the psons named in the sd schdle by the precedg clauses hrof.

IN WITNESS whrof the sevl pties have hrunto set their respive hands, the sd A., B., & C., & such of the psons named in the sd schdle as are now in the service of the firm on the —— day of ——, & such of the psons named in the sd schdle as are not now in the service of the firm on the sevl days written opposite their respive names in the sd schdle.

[*Schedule.*]

XXII.

AGREEMENT *for* WORKING *a* QUARRY. *A Short Form* (*b*).

Parties.

AN AGRMT made, &c., betn A. (hrinar called the owner), 1; B. (hrinar called the contractor), 2. WHBY IT IS MUTUALLY AGRD that the contractor shl get stone from the quarry, lately opened on —— farm by the owner upon the terms follg:—

Agreement to get stone.

THE CONTRACTOR SHL AT HIS OWN EXPSE—

Method of working.

1. GET and cord bldg & rough blue stone from the sd quarry for the use of the owner.

2. REMOVE the whole of the stone from any pit bfe openg another.

3. FILL in every pit as soon as it is exhausted, or sooner if reqd, & replace the top mould so as to render it as fit as circes will admit for agricultural operons.

THE OWNER SHL—

(*b*) It will be seen that this is merely a working agreement, not operating as a demise. For forms operating as demises of quarries, &c., see *post*, *sub tit.* "LEASES." As to quarries more than twenty feet deep, see the Quarries Act, 1894, s. 1. Gravel and sand are minerals within the meaning of the Act: *Scott* v. *M. Rly. Co.*, [1901] 1 K. B. 317.

4. Pay to the contractor the sum of —— shillings per cubic yard for gettg & cordg bldg stone, & the sum of —— shillings per cubic yard for gettg & cordg rough blue stone. Remuneration.

And it is hby agrd as follows—

5. The contractor shl cord the stone at the option of the owner at the mouth of the quarry or by the side of the road, on the —— side of —— farm, but in the latter case the owner shl cart the stone from the quarry to the side of the road at his own expse. Place for cording.

6. The contractor shl receive a weekly paymt on acct in proportion to the work actually done, but not to exceed £—— a week for each man actually employed. Such paymt is to be brought into acct when the corded stone is measured, & the balce (if any) pd to the contractor. If the balce shd be agst him, he shl forthwith repay the same to the owner. Payment on account.

7. Either party may determine this contract on givg one week's written notice, & thrupon the contractor shl, if reqd by the owner, fill in every open pit & replace the top mould so as to render it as fit as circes will admit for agricultural pposes. But if the owner shl determine the contract, the contractor shl be at liberty prior to fillg in any pit to get & cord the stone from the same, he workg with all pper despatch & being pd for the stone after the rate afsd. Determination of contract by notice.

In witness, &c.

XXIII.

AGREEMENT *for the supply of* Electric Light *by* Company *empowered by Provisional Order to* Large Consumer (*a*).

Parties, The —— Co., Ltd., whose regtred office is at —— (hrinar called the Co), 1. A. & B., carrying on business Parties.

(*a*) This is an agreement for a supply under the alternating transfer system. As to the relative advantages of this and the continuous current system, see the Parliamentary Paper, No. 189, of 17th June, 1889. See the Electricity (Supply) Acts, 1882 to 1922 ; the Electric Lighting (Clauses) Act, 1899 ; and the Board of Trade Regulations for securing the safety of the public, and for ensuring a proper and sufficient supply of electrical energy. See also Will on Electric Lighting, 3rd ed., pp. 243 *et seq.*

The agreement is exempt from stamp duty : Electric Lighting Act, 1909, s 19.

as —— at ——, under the style or firm of —— (hrinar called the consumers), 2.

Recital as to constitution of company.

WHAS the Co is constituted under the Companies Consolidon Act, 1908, & is empowered under the —— Electric Lighting Order, 18— (hrinar referred to as the sd Order) confirmed by the Electric Lighting Orders Confirmation (No. ——) Act, 18—, & the Electric Lighting Acts, 1882 to 1909, to supply electric energy (hrinar called "energy") in the district of ——: AND WHAS for the ppose of their sd business at —— the consumers require for their business premes & bldgs, No. —, —— Street, a supply of energy for lightg, & it has been agrd betn the pties hto that the Co shl supply the consumers with energy for lightg at the price & subjt to the condons hrinar mentd: NOW IT IS HBY MUTUALLY AGRD AS FOLLOWS:—

Agreement to supply energy for lighting.

1. THE consumers shl, at their own cost & within one calendar month after the date of this agrmt, provide (*b*) within the sd business premes or bldgs a suitable receptacle for transformers [with suitable automatic quick-acting cut-offs] from wch the consumers will take their supply of energy for lightg from the Co (*c*), & upon notice of such receptacle being ready the Co will within one calr month from the date of such notice, at its own cost, provide thrin all necy transformers for producg energy, viz., two-phase alternating current at pressure of —— volts, within the sd business premes & bldgs, & lay the necy cables from such transformers to the nearest main or other most convenient supply cable of the Co, & supply energy for lightg to the consumers at the sd business premes & bldgs at the price & subjt to the terms hrinar contd, such energy being two-phase at the pressure afsd. The transformers shl remain the ppty of the Co, & may be removed by them after they cease to supply under this agrmt. Durg the continuce of the supply the consumers will keep the sd

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(*b*) See *Att.-Gen.* v. *Leicester Corpn.*, [1910] 2 Ch. 359; *Att.-Gen.* v. *Sheffield Corpn.*, 106 L. T. 367.

(*c*) See Clause 10. An agreement by the consumers to take the whole of the electric energy required for the premises from the company will amount to a negative covenant not to take energy from any other company. In the present agreement such a negative covenant will be implied as regards energy for lighting purposes, but, it is conceived, will not extend to energy required for other purposes: see *Met. Electric Co.* v. *Ginder*, [1901] 2 Ch. 799; *Att-Gen.* v. *Hackney Corpn.*, [1918] 1 Ch. 372.

receptacle in good repair & condon, & permit the Co at all times to have sole access thto.

2. The price to be charged by the Co to the consumers for the sd energy shl be —— per Board of Trade unit (*d*) betn the hours of —— p.m. on one day & —— a.m. on the followg day (—— consecutive hours), & —— per unit betn the hours of —— a.m. & —— p.m. on each day (—— consecutive hours). Price (*cc*).

3. If the "load factor" (wch expression shl be taken to mean for the ppose of this agrmt the average load divided by the maximum load expressed as a percentage, the average load being defined as the total units divided by the total hours & by the voltage, so as to eql the load in amperes, & the maximum load being defined as the maximum readg shown on an approved maximum demand indicator which reads in amperes (*a*)) be not less than twenty-five hundredths in any yr from the date of the commencemt of supply hrunder, the Co will for that yr & subjt as hrinar expressed allow by way of rebate (& if pd will return) to the consumers any sum wch shl be pd by the consumers to the Co in excess of an average rate of —— per unit upon the total amt of energy supplied by the Co hrunder durg such yr. Such rebate shl be deemed a special discount to the consumers, & is subjt to the obligon of the consumers Provision for rebate. Definition of "load factor."

(*cc*) The provisions of ss. 19 & 20 of the Electric Lighting Act, 1882, relating to the fixing of charges for the supply of electricity, are explained in *Att.-Gen.* v. *Long Eaton U. D. C.*, [1914] 2 Ch, 251; affirmed [1915] 1 Ch. 124; see also *Att.-Gen.* v. *Ilford U. C.*, 84 L. J. Ch. 860; *Att.-Gen.* v. *Hackney Corpn.*, [1918] 1 Ch. 372.

(*d*) What is generally called the "Board of Trade unit" is defined to mean "the energy contained in a current of one thousand ampères flowing under an electro-motive force of one volt during one hour," see Will on Electric Lighting, 234, and Parliamentary Paper, 1894, C—7552. The volt is the unit of electro-motive force, the ampère is the unit of current, and the ohm is the unit of resistance (named after famous electricians) and their values for steady flow are governed by the well-known Ohm's Law, see Clerk-Maxwell's Electricity and Magnetism, vol. I., part II., chap. VI.; Wiedermann, Lehre vonder Electricität, vol. I., 271 *et seq.*; Jeans, Electricity and Magnetism, 296 *et seq.*, 331. As to alternating currents, see Sir J. J. Thomson's Recent Researches in Electricity and Magnetism, chap. IV.

(*a*) The above definition of "load factor" is believed to be correct, and such as should generally be acceptable to both company and consumers. The object of the definition has been to introduce a common electrical factor intelligible to the consumers.

to pay at least £—— yrly for a period of not less than —— yrs as hinar provd, & for the pposes of this clause the Co shl furnish the consumers with a special acct within one month from the expiron of each yr from the date of commencemt of supply hrunder & so long as this agrmt shl remain in force, wch acct shl show the load factor & the maximum load for such yr.

Minimum payment for each year.

4. If the amt wch the consumers become liable to pay for energy hrunder is less than £—— in any yr or yrs durg the sd period of not less than —— yrs, calculated from the date of commencemt of supply hrunder, the consumers will pay to the Co at the expiron of every such yr such a sum as will make up a total sum of £—— net witht any deduction for each yr durg such —— yrs. If under the powers or provons of the sd Acts & Order the Co shl cut off or discontinue the supply, the consumers shl forthwith pay to the Co £——, less such net sum as shl have been previously pd by the consumers under this agrmt for energy.

Times of payment —interest.

5. The amt to be payable by the consumers to the Co for energy for lightg supplied hrunder shl be pd on the usual qtr days in each yr, or within —— days thrafter, beginning on the qtr day next after the commencemt of supply hrunder, the last paymt being made on the qtr day next after the terminon of such supply, [& intt at the rate of £—— p.c. p.a. shl also be pd by the consumers to the Co on any sums payable for supply of energy more than —— days overdue, such intt being calculated from the date when such sums became due to the date of actual paymt throf.]

Meters.

6. Meters shl be provd by & belong to the Co, & shl be of —— or some other type to the reasble approval of both pties, & the consumers shl pay to the Co a rental at the rate of —— per qtr for each one hundred ampere meter & a rental at the Co's usual rate for other meters of less capacity and pportnate amts for any less period. The meters shl be fixed by the Co at their own expse in such positions as shl be decided upon by the consumers, & the meters shl be kept in order & read by the Co, & the readgs of all such meters shl be delivered each qtr by the Co to the consumers with the demand for paymt. The consumers shl be at liberty to have the meters tested at any time and from time to time by the public authority or by

their own or other the electrical engineers or engineer for the time being of the consumers (*a*).

Faulty meter.

7. SHOULD any meter be found durg the continuce of this agrmt to cease or omit to register accurately, or orwise to be unavailable for measurg the supply, the consumers shl pay in respt of the energy supplied durg such period a reasble pportn based on subseqt readgs of an accurate meter substituted therefor.

Power to determine agreement.

8. THIS agrmt shl remain in force unless & until it is terminated by —— calendar months' written notice by either party : PROVD ALWAYS that such notice shl not be given by either party until —— months prior to the expiron of —— yrs from the commencemt of supply. The terminon of this agrmt by notice as afsd or the cutting off or discontinuce of the supply shl not prejudice or affect the rt of the Co to receive any moy then owing or due from the consumers, & such moys shl be payable on the qtr-day next after the determinon of this agrmt.

Notices.

9. [ANY notice given by the Co hrunder may be signed by the secretary of the Co, & may be left at the sd business premes & bldgs of the consumers, & any notice given by the consumers hrunder may be left at the regrd office of the Co.]

Agreement subject to Order and Acts.

10. SAVE as afsd, this agrmt is subjt to the sd Order & Acts, & the rts of the Co & of the consumers hrunder are subjt to those created by the sd Order & Acts, & the same shl apply to the supply hrunder : PROVD that nothg in this clause or the sd Order contd shl entitle the Co to chge a higher price for energy for lightg than is hrinbfe agrd : AND PROVD further that nothg hrin contd shl preclude the consumers from obtaing energy orwise than from the Co for pposes other than lightg pposes.

AS WITNESS, &c.

(*a*) Any dispute between the undertakers and a consumer as to the accuracy of a meter is to be determined by the electric inspector as provided by clause 57 of the Schedule to the Electric Lighting (Clauses) Act 1899 : as to the effect of the non-appointment of any inspector under clause 35 of the Schedule, see *Hendon Electric Supply Co.* v. *Banks*, 87 L. J K. B. 790.

XXIV.

AGREEMENT *for the supply of* ELECTRIC LIGHT *by* COMPANY *to* SMALL CONSUMER *where* COMPANY *supplied with energy by* CORPORATION *under Provisional Order* (*a*).

Parties. *PARTIES,* The —— Co. Ltd whose registered office is at —— (hrinar called the Co), 1. A., of —— (hrinar called the consumer), 2.

Supply of energy. **1.** THE Co shl supply to the consumer, & the consumer shl accept at the house, No. —— Street, such electric energy as may be requisite or pper for the lamps, candle power & motive power specified in the schdle hto.

Meters. **2.** THE supply shl be regrd by meters to be provd & fixed by the Co at their own expse in such positions as shl be decided upon by the consumer, & the meters shl be kept in order & read by the Co & the readings of all such meters shl be delivered each qtr by the Co to the consumer with a demand for paymt.

Payments. **3.** THE consumer shl pay to the Co on the usual qtr days at the rate of —— per Board of Trade unit for all electric energy supplied during the precedg qtr & regrd as afsd, togr with 2*s.* 6*d.* for hire of each meter for the then precedg qtr.

4. *Provision as to faulty meter,* p. 81.

Power to discontinue supply during alterations in works (*b*). **5.** THE electric energy to be supplied by the Co under this agrmt will be supplied to them by the Corporon of ——, & for the ppose of repairg or effectg alterons in or addons to the generatg stations, supply mains, or in connection thwith, the Co or the Corporon may discontinue the supply for such periods as shl be absolutely necy.

Temporary failure of supply. **6.** THE Co shl not be responsible for any temporary failure in the supply of electric energy occasioned by tempest, fire, or other cause not under the Co's control, but will restore the supply with all reasble diligence except such failure shl arise from the act or default of the Corporon.

(*a*) See note (*a*), p. 77. As to the necessity of a contract, see *Husey* v. *London Electric Supply Corpn.*, [1902] 1 Ch. 411.

Sometimes the consumer stipulates that no change should be made in the pressure of the supply.

(*b*) See Electric Lighting Act, 1909, s. 18.

Notices to be given by consumer.

7. The consumer, or any person employed by him, shl bfe commencg any works for the user of electric energy supplied to him under this agrmt give notice in writg of his intentions to the Co [& to the office in which the sd house shl be insured agst loss or damage by fire], & all such works shl be carried out & exted [in strict accordce with the regulons of the —— Insce Socy &] under the supervision & to the satisfon of psons appted both by the Co & the Corporon who resply may stop & require to be rectified any work or operation of wch they disapprove. All interior apparatus & lamps for completg the installation shl be provd by & at the expse of & shl belong to the consumer (*c*), & shl be fitted [in accordce with such regulons &] under such supervision & to such satisfon as afsd.

Powers of inspection.

8. It shl be lawful for the Co & the Corporon resply & for their respive agents from time to time at any reasble time in the day time during the currency of this agrmt to enter on the premes supplied with electric energy by virtue of this agrmt & to inspect all apparatus & lamps used for the consumption of electric energy, & of all defects in the same wch may in the opinion of any such agent be likely to cause danger of fire or to life to give notice to the consumer & to cut off the supply of electric energy until such defects shl be made good.

Power to determine agreement.

9. This agrmt may be determined by either party on giving three calendar months' notice in writg to the other. Such notice if given to the consumer shl be sufftly served if left at the sd house or if given to the Co if left at their regrd office at ——.

In witness, &c.

[*Schedule stating number, &c., of lamps and motive power.*]

(*c*) See *Att.-Gen.* v. *Leicester Corpn.*, [1910] 2 Ch. 359; *Att.-Gen.* v. *Sheffield Corpn.*, 106 L. T. 367.

APPOINTMENTS

PRELIMINARY NOTE.

See Elph. Introd., 7th ed., 93, 443. For testamentary appointments, see Wills; and see also Settlements; and for appointments of new trustees, see that heading.

Law as to appointments under special powers.

The law as to appointments is chiefly important in connection with appointments under special powers, *i.e.*, powers exercisable in favour of a limited class of objects, as to which the following points principally require notice:

Exclusive appointments.

Validity is given to exclusive and illusory appointments under special powers of s. 158 of the L. P. Act, 1925, which (replacing the Illusory Appointments Act, 1830, and the Powers of Appointment Act, 1874) provides that no appointment is to be invalid on the ground that any object of the power is thereby altogether excluded from benefitting or receives a merely nominal or illusory share, but by sub-s. (2) preserves the effect of any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

Objects of power.

Care must, of course, be taken to keep within the power as to the objects in whose favour an appointment may be made, bearing in mind that under a power to appoint to children an appointment cannot be made to the issue of a child: *Brudenell* v. *Elwes*, 1 East. 442, 7 Ves. 382; nor to the representatives of a deceased child: *Maddison* v. *Andrew*, 1 Ves. Sen. 58, for whom provision can only be made by leaving a share unappointed to devolve on them under the trust in default of appointment (with the aid of the hotchpot clause, if any), assuming that the deceased child had attained a vested interest; but a power to appoint to "issue" *primâ facie* includes all descendants, though the context may show that it means children, Norton on Deeds, 421; and therefore under such a power an appointment may be made to a child, with remainder to his issue, the class of issue who take being restricted as to perpetuity. A power of appointment among children of the donee of the power is not necessarily confined to children of a first marriage: see *Re Hancock*, [1896] 2 Ch. 173. And in any case an appointment among a class of whom some are objects of the power and some not, may be good as to the shares appointed to the former: *Re Witty*, [1913] 2 Ch. 666: and see *Re Leahy* [1920] 1 Ir. R. 260.

Perpetuities.

Care must also be taken in exercising a power to appoint among issue to keep within the perpetuity limit, both as regards the objects of the appointment and the time at which their interests are to vest, especially where the objects of the appointment are referred to by a class description, the criterion in all cases being whether the interests created by the appointment would have been valid if inserted in the instrument creating the power: see Goodeve R. P., 5th ed., 293; *Re Thompson*, [1906] 2 Ch. 199; *Re Paul*, [1921] 2 Ch. 1. Thus, under a power in an antenuptial settlement to appoint to issue generally, an appointment to a son for life with remainder to such of the son's children as attain 21, is of course too remote: *Re Warren*, 26 Ch. D. 208. So under a similar power the vesting of the shares of the children of the marriage cannot be postponed to a later age

than 21, except as to those who attain the specified age within 21 years from the death of the surviving parent: *Re Gage*, [1898] 1 Ch. 498.

An appointment to a class some of the members of which may by possibility attain vested interests after the period limited by the rule against perpetuities is bad, not only as regards such members, but as regards all the members of the class, because the ascertainment of the share of any member of the class is necessarily postponed beyond the legal limit: *Pearks* v. *Moseley*, 5 App. Cas. 714; *Re Game*, [1907] 1 Ch. 276.

An appointment, otherwise valid, will not be invalidated by a superadded condition, such as a condition restraining anticipation, the effect of which would be to restrict the power of disposition beyond the legal limit; but the condition may be rejected: *Fry* v. *Capper*, Kay, 163, and cases cited in *Re Ridley*, 11 Ch. D. 645; *Re Holland*, [1914] 2 Ch, 595: *Re Oliphant*, 86 L. J. Ch. 452. See also *Pearks* v. *Moseley*, *sup.*; and where the appointment is to a class of persons and the condition imposed is one which affects individual members of the class, but does not affect the class as a whole, and is therefore severable, it is valid where it can legally apply and may be rejected where it cannot. *Re Russell*, [1895] 2 Ch. 698, where the condition was for the settlement of daughters' shares: *Re Game*, [1907] 1 Ch. 276, where the condition was in restraint of anticipation.

A power of appointment among several may validly be exercised by an appointment to one of a life interest or an interest defeasible upon the happening of a contingency, with a gift over to other objects of the power, provided that the interests in remainder are ascertainable within the perpetuity limit: *Wilson* v. *Wilson*, 21 Beav. 25; *Wainwright* v. *Miller*, [1897] 2 Ch. 255; *Re Gage*, [1898] 1 Ch. 498. Special care is required to avoid offending against the rule where the ascertainment of the class to take under the gift over is made dependent upon a condition of defeasance annexed to the prior gift: see *Hodgson* v. *Halford*, 11 Ch. D. 959, and Jarman on Wills, 6th ed., 301.

Relief from failure in certain cases.

Some relief against the failure of appointments due to inattention to the rule against perpetuities is afforded by s. 163 of the L. P. Act, 1925, which so far as relates to appointments by deed executed after 1925, provides in effect that where in any such appointment the absolute vesting of either capital or income or the ascertainment of a beneficiary or of a class of beneficiaries is made to depend on the attainment by the beneficiary or members of the class of an age exceeding 21 years with the result that, but for the section, the gift to that beneficiary or class of beneficiaries or any member of such class would be rendered void for remoteness, the appointment is to take effect for the purpose of such gift as if 21 years had been substituted therein for such greater age; but without prejudice to any provision whereby the absolute vesting or ascertainment is also made to depend on the marriage of any person, or any other event which may occur before the age stated in the appointment.

A valid appointment cannot be made under a power limited upon a contingency such that it may arise and become exercisable at a date beyond the perpetuity limit: *Re Norton*, [1911] 2 Ch. 27: *i.e.* the power must not be too remote, either in its creation or in its exercise: *Re De Sommery*, [1912] 2 Ch. 622: *Kennedy* v. *Kennedy*, [1914] A. C. 215; and cf. *English* v. *Cliff*, [1914] 2 Ch. 376.

The rule that land could not be limited to the issue of an unborn person if that limitation were preceded by a life estate to that unborn person, commonly called the rule of double possibilities, is abolished in reference to

all limitations and trusts created by instrument coming into operation after 1925. See L. P. Act, 1925, s. 161.

Delegation of power.

A special power being fiduciary cannot be delegated: Sugden on Powers, 8th ed., 179; and, therefore, if the appointment is executed by an attorney, the power should be limited to executing the deed: *Re Airey*, [1897] 1 Ch. 164. And if an appointment under a power to appoint to children or issue is made to a child for life with remainder to its issue, a power of appointment among the issue cannot be given to the child: *Ingram* v. *Ingram*, 2 Atk. 88; *Williamson* v. *Farwell*, 35 Ch. D. 128. Although in a similar case, the power may validly be exercised by an appointment to a child for life with a general power of appointment by deed or will (see Farwell, 3rd ed., 334, 370), the general power if restricted to appointments made with the consent of a third person will be bad: *Webb* v. *Sadler*, L. R. 8 Ch. 419; *Scotney* v. *Lomer*, 29 Ch. D. at p. 541. For the same reason, although the life interest of the child can be validly made determinable on bankruptcy, &c. within the period allowed by the rule against perpetuities, the usual trust (creating a protected life interest) for the application of the income after forfeiture at the discretion of the trustees for the benefit of the child and other objects, even although the latter are within the power, would be bad: *Re Baldock*, 48 Sol. J. 492. Similarly in the exercise of a power to appoint to children or issue, a discretionary power to trustees to apply the income of expectant shares towards maintenance, or to make an absolute transfer of all or part of a contingent share, is void: *Re Greenslade* [1915] 1 Ch. 155: *Re Joicey*, [1915] 2 Ch. 115. See generally as to delegation of powers: Farwell, 3rd ed., 498 *et seq.*

Where an appointment is made under a settlement containing a power to the husband or wife to withdraw part of the funds from settlement on a second marriage or otherwise, this power should be expressly reserved or negatived where it would clash with the appointment.

Other points.

The equitable doctrine as to frauds on powers must also be carefully borne in mind; see the notes to *Aleyn* v. *Belchier*, 2 Wh. & T. L. C. 314; and *Cloutte* v. *Storey*, [1911] 1 Ch. at p. 131: *Tharp* v. *Tharp*, [1916] 1 Ch. 142: [1916] 2 Ch. 205. As to what conditions may lawfully be annexed to an appointment, see *Hodgson* v. *Halford*, 11 Ch. D. at p. 966; *Wainwright* v. *Miller*, [1897] 2 Ch. 255; *Vatcher* v. *Paull*, [1915] A. C. 372, 379, and cf. *Re Cohen*, [1911] 1 Ch. 37: *Re Holland*, [1914] 2 Ch. 595, 601; *Re Oliphant* 86 L. J. Ch. 452: *Re Leahy*, [1920] 1 Ir. R. 260; *Re Staveley*, 90 L. J. Ch. 111. As to the protection afforded to purchasers claiming under certain void appointments, see L. P. Act, 1925, s. 157, and *post*, *sub tit.* "Declarations, Statutory." And as to the effect of the donee of a special power releasing or covenanting not to exercise it, or to exercise it in a particular manner, see Vol. 2, "Settlements (Personal)."

An appointor exercising a special power cannot supersede the trustees of the settlement creating the power and substitute other trustees contrary to the intention of the donor of the power to be gathered from the instrument creating the power: *Re Tyssen*, [1894] 1 Ch. 56; *Re Mackenzie*, [1916] 1 Ch. 125 and cases there cited; and see *Re Paget*, [1898] 1 Ch. at p. 296; *Re Purdie*, 48 Sol. J. 524; *Re Mackenzie*, [1917] 2 Ch. 58.

A power of appointment over land can operate only in equity; L. P. Act, 1925, s. 1 (7); and an appointment among objects of the power in undivided shares must take effect, so soon as the interests appointed become interests in possession, behind a trust for sale: S. L. Act, 1925, s. 36. A power to appoint land is well exercised by an appointment

settling the proceeds of sale of the land among the objects of the power: *Re Ainsworth*, [1921] 2 Ch. 179; or by an appointment by way of charge on the land in favour of the objects; *Thwaytes* v. *Dye*, 2 Vern. 80; *Trollope* v. *Linton*, 1 Sim. & St. 477.

Extinguishment of power.

A power of appointment, whether general or special, is put an end to by any dealing by the donee of the power with the property the subject of the power, to the extent to which such dealing is inconsistent with its future exercise: *Re Hancock*, [1896] 2 Ch. 173 (a case of prior irrevocable appointment): *Foakes* v. *Jackson*, [1900] 1 Ch. 807 (a case of concurrence by donee of power in prior transfer); cf. *Earl of Lonsdale* v. *Lowther*, [1900] 2 Ch. at p. 697; *Re Sugden*, [1917] 2 Ch. 92 and cases there cited.

Revocation of appointment.

A power of revocation reserved by an appointment is not equivalent to a power of appointment, and is not necessarily exercised by a subsequent appointment expressed to be made in exercise of the original power and of "every or any other power": *Re Thursby*, [1910] 2 Ch. 181. For the same reason a mere general devise or bequest will not by virtue of s. 27 of the Wills Act, 1837, be construed as an exercise of such a power: see Vol. 2, WILLS, "GIFTS OF RESIDUE." A previous appointment cannot be revoked by the donee with the object of obtaining a benefit thereby: *Re Jones*, [1915] 1 Ch. 373; but a power may be released with that object: *Re Somes*, [1896] 1 Ch. 250.

Rescission.

An appointment made in forgetfulness of an earlier appointment to the same person may be rescinded on the ground of mistake, see *Hood* v. *Mackinnon*, [1909] 1 Ch. 476.

Instances of miscarriage in the case of appointments under special powers owing to want of attention to one or other of the points above mentioned are frequent. See further Farwell on Powers and Tudor's L. C., Conv., notes to *Alexander* v. *Alexander*.

Formalities as to execution.

Where special formalities as to the mode of execution are prescribed by the power, the appointment may either be executed as so prescribed or attested by two witnesses in the ordinary mode; see the L. P. Act, 1925, s. 159. A power of appointment, exercisable by writing, is not validly exercised by a document purporting to be a will but not admitted to probate: *Re Barnett*, [1908] 1 Ch. 402.

Stamp.

As to the stamp on appointments, see the Stamp Act, 1891, sched. tit. APPOINTMENT, SETTLEMENT, REVOCATION, and the Fin. (1909–10) Act, 1910, s. 74. The last-mentioned Act applies only to appointments operating as voluntary dispositions *inter vivos*, that is to say, to appointments made in exercise of general powers of appointment. An appointment made in exercise of a special power does not operate as a disposition at all. Its operation is confined to the selection by the appointor of the persons to take under a disposition previously made by the settlor and of the shares in which those persons are to take the property comprised in that disposition. The only disposition is that effected by the settlement itself, not by the appointment which takes effect under the trusts of the settlement: see *Att.-Gen.* v. *Chapman*, [1891] 2 Q. B. 526, and cases cited at p. 533; *Att.-Gen.* v. *Gosling*, [1892] 1 Q. B. at p. 548. It will be advisable, however, to have the stamp adjudicated in all cases.

Estate Duty.

In default of any appointment under a general power estate duty becomes payable on the death of the donee: *Re Hicklin*, [1917] 2 Ch. 278.

I.

APPOINTMENT *by* INDEPENDENT DEED-POLL (*a*) *by a* WIDOW *under a power in her* MARRIAGE SETTLEMENT, *of a* SUM *of* STOCK (*b*), PART *of a larger* SUM, *subject to the* APPOINTOR'S *life* INTEREST, *to a* SON. VARIATIONS *where express provision is made as to application of* HOTCHPOT CLAUSE (*c*) *and for* FORFEITURE *on* ASSIGNMENT (*d*).

Recitals. Marriage settlement of appointor.

A DEED OF APPOINTMENT made by A., of, &c., Widow: WHAS by an indre dated, &c., & made, &c. (being a settlemt made in conson of the marre shortly aftwds solemnised betn the sd B. & A.), certn shares or intts to wch the sd A. was then entitled in reversion expectant on the death of her father K. in the trust moys, stks, funds, or secs, subjt [or to become subjt] to the trusts of an indre dated, &c., and thrin referred to, & wch were by the now reciting indre assned to the sd P. & Q., and three sevl sums of £—— Consold. 3 p.c. annuities,

As to endorsing and annexing appointments.

(*a*) Appointments of the nature of that in the text are frequently made without recitals (see Prec. IV.). It is sometimes convenient to endorse the appointment on the settlement creating the power, as in the next Precedent. Alternatively it may be described as supplemental to the settlement or will and to any previously endorsed or supplemental instruments: see L. P. Act, 1925, s. 58. In either case recitals of the original deed or will, and of the previously endorsed or supplemental instruments or of matters therein recited, will be omitted, except so far as a reference to the contents of the previous instruments may be necessary to make the new deed intelligible: see *post*, "DEEDS, FORMAL PARTS OF."

(*b*) An appointment of an aliquot share of the trust estate or of a sum of money is generally preferable to an appointment of a specific sum of stock which is seldom made except where, as in the next precedent, the prior life interest is intended to be released and the appointed property resettled without the necessity of realization and reinvestment.

Where a specific part of the settled property is appointed, it becomes the absolute property of the appointee subject to the prior life interests and to any exercise of the power of varying investments. It follows that if any change of investment of the settled property is made, the investments representing the specifically appointed part should be ear-marked. The appointed part is not liable to ademption as would be the case if the appointment were by will: cf. *Re Dowsett*, [1901] 1 Ch. 398; *Beddington* v. *Beaumann*, [1903] A. C. 13.

(*c*) See *post*, p. 92, note (*a*).

(*d*) See *post*, p. 91, note (*e*).

£—— Reduced 3 p.c. annuities & £—— New 3 p.c. annuities (*e*) wch were thrin recited to have been transferred into the names of the sd P. & Q. were settled upon certn trusts after the solemnison of the sd then intd marre for the investmt & varyg the investmt throf, & for paymt & applicon of the income throf durg the lives & life of the sd A. & B. & the survor of them (*f*), & after the death of such survor in trust as to the trust premes & the income throf for all or any of the chln of the sd marre in such shares & mner in all respts as the sd A. & B. shd by any deed or deeds revocable or irrevocable jointly appt & in default of & subjt to any such apptmt as the survor of them the sd B. & A. shd in like mner appt: [AND in default of & subjt to any such apptmt in trust for all, *&c., continue trust in default of either apptmt.* And in the indre now in recital it was provd that no child, *&c., continue hotchpot clause* (*a*)]: AND WHAS the sd K. died on the —— day of ——: AND WHAS shortly after the death of the sd K. the sum of £—— was pd to the trees of the sd settlemt in satisfon of the sd shares or intts thby settled: AND WHAS the sd B. died on the —— day of ——, witht havg concurred with the sd A. in makg any apptmt of any pt of the trust premes under the joint power in that behalf given to them by the sd settlemt: AND WHAS the sd respive sums of £—— Consold Reduced & New 3 p.c. annuities & the sd sum of £—— are now represented by the sums of stk & secs the parlars whrof are specified in the

Death of father of appointor.

Payment of settled share to trustees.

Death of appointor's husband.

Present state of the trust funds.

(*e*) Since the National Debt Act, 1870, the old 3 per cents. have been described (as in that Act) as above. The proper designation of the stock created under the National Debt Conversion Act, 1888, s. 2 (4) (popularly known as Goschens) is now "2½ per cent. Consold. stk." The small amount of 2¾ per cent. stock previously in existence (known as Childers), is not reducible to 2½ per cent. As to the effect of the Act of 1888, and as to previous legislation with regard to the National Debt, see Burdett's Official Intelligence.

Designation of public funds.

Consols, £2 10*s.* p.c.; Annuities, £2 15*s.* p.c.; Annuities, Local Loans Stock and Guaranteed, £2 15*s.* and 3 p.c. Stocks (Irish Land Stocks) can be made transferable by deed under the Fin. Act, 1911, s. 17, according to the regulations printed in [1912] W. N., pt. 2, p. 114.

Transfer by deed.

(*f*) The form of recital as to income in the text is very convenient where either life interest is determinable or protected, but it is not adapted to the case where a life interest is intended to be released.

(*a*) This bracket is intended to be inserted when express provision is made as to the application of the hotchpot clause contained in the original settlement.

That appointee is one of the children of the marriage.

schdle hto, all of wch are now standg in the names of S. & T., the psnt trees of the sd settlemt: AND WHAS there have been —chln of the marre of the sd B. & A., of whom C. of, &c. is one: AND WHAS the sd A. is desirous of makg such apptmt of pt of the sd trust funds in favour of the sd C. as is hrinar contd:

Desire to appoint.

NOW THIS DEED WITNESSETH that in exercise of the power for this ppose given to her by the recited indre of settlemt, & of every or any other power enablg her in this behalf (*b*),

Appointment of sum of stock.

the sd A. hby irrevocably appts that the sum of £—— $2\frac{1}{2}$ p.c. stk, pt of the sum of £—— like stk specified in the sd schdle hto, shl subjt to the prior intts thrin durg the life of the sd A. under the sd settlemt & subjt to the duties (*c*) (if any) wch will be payable in respt throf on the death of the sd A. (*d*)

General words in appointments.

(*b*) These general words referring to all powers should be inserted in appointments; but in a case in which the circumstances were special, in the absence of any recital showing what power was in fact intended to be exercised, they were held ineffectual: *Re Porter*, 45 Ch. D. 179; see also *Re Thursby*, [1910] 2 Ch. 181.

(*c*) The rateable part of any duty payable on A.'s death attributable to the appointed property, would be payable thereout without express direction: *Re Shaw*, [1895] 1 Ch. 343; *Re Countess of Orford*, [1896] 1 Ch. 257; see *Re Coxwell*, [1910] 1 Ch. 63: *Re Grant* 85 L. J. Ch. 31; and cf. *Re Repington*, [1904] 1 Ch. 811. If not so intended express provision to the contrary should be inserted, see *post*, *p.* 93.

Estate duty on property settled by husband or wife.

(*d*) Where the settlement is by deed of property belonging to the husband or wife upon the usual trusts of a marriage settlement, estate duty, not having been paid in connection with the death of the other party to the marriage, will usually be payable on the death of whichever of the husband and wife takes the first life interest; but in the unusual case of either husband or wife taking a first life interest either solely or jointly with the other in the property of the other, then if the deed were executed before the 2nd August, 1894, "and on his or her death the survivor becomes entitled to the income" only, not to the corpus (*Att.-Gen.* v. *Strange*, [1898] 2 Q. B. 39; *Att.-Gen.* v. *Glossop*, [1907] 1 K. B. 163), "of the property settled by such survivor," estate duty will not be payable in respect of the settled property until the death of the survivor: Fin. Act, 1894, s. 21 (5).

The settled property will usually be exempt from estate duty on the death of whichever of the husband and wife takes the second life interest, whether he or she predeceases or survives the other, in the former case under the Fin. Act, 1894, s. 5 (3), because the second life interest fails before it becomes an interest in possession, subsequent limitations under the settlement continuing to subsist: *Att.-Gen.* v. *Wood*, [1897] 2 Q. B. 102; and, in the latter case, under the joint operation of s. 5 (2) of the same Act, and the Fin. Act, 1914, s. 14 (*a*), because estate duty will already have been paid on the death of the other party to the marriage: *Re Harrison*, [1918] 2 Ch. 374.

It may sometimes happen that the husband or wife taking the second

belong to & be held in trust for the sd C. absolutely, but witht prejudice to the powers of varyg investmts contd in the recited indre (*e*). [And the sd A. hby further appts that the share to be brought into hotchpot & accounted for by the sd C. under the provon in that behalf contd in the recited indre in respt of the sd sum of £—— Stk hby appointed to him shl

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life interest in property settled by himself or herself, and predeceasing the other, is at his or her death competent to dispose of the settled property, in which case estate duty will be leviable on his or her death, with an option to the persons accountable to postpone payment, but will not be payable again on the death of the survivor: see Fin. Act, 1914, s. 14. As the case supposed is one to which the Fin. (1909–10) Act, 1910, s. 55, does not apply, the result would have been the same if the survivor had died before the 16th August, 1914: see *I. R. Commrs.* v. *Priestley*, [1901] A. C. 208.

The same considerations apply to the case of a settlement by will under which husband and wife take successive life interests. Where the appointment is made in exercise of a power contained in the will of either husband or wife, settling property on the other for life with the usual trusts in favour of children on the death of the tenant for life, estate duty will have been paid in connection with the death of the settlor, and will not again become payable on the death of the tenant for life making the appointment, namely, the other party to the marriage. Where, however, the appointor takes the only life interest under a settlement made by the will of a stranger, *e.g.*, the father or mother of the appointor, estate duty will be payable on the appointor's death. As to the scale of rates of estate duty now in force, see the Fin. Act, 1919, s. 29.

Succession duty.

Succession duty in the case of successions arising as mentioned in s. 58 (4) of the Fin. (1909–10) Act, 1910, is now payable at the amended rate prescribed by that section, and, subject to the provisions of subs. 2 thereof, will become payable on the death of the tenant for life notwithstanding that the successors are husband or wife or lineal descendants, and that estate duty is payable or has already been paid since the date of the settlement. As to the limit of the amount payable, see Fin. Act, 1914, s. 13 (2).

Forfeiture clause on assignment, &c.

(*e*) The following form may sometimes be useful:—" Provd always & the sd A. hby further appts that if durg her life any act or event (except as hrinar mentd) shl be done or happen whby the ppty hby appted or any pt throf wd if belongg absolly to the sd C. become vested in or charged in favour of some other pson or psons or a corporon, then these psnts & everything hrin decld shl become void. Provd that a charge or assnmt made by the sd C. with the consent in writg of the sd A. or of the trees or tree for the time being of the recited settlemt bfe the determinon of the intt of the sd C. shl not render these psnts or anything hrin contd void & shl not be affected by any subseqt determinon of the intt of the sd C.

be deemed to be the value at the death of the sd A. of the sd sum of £—— Stock or in case in the meantime any variation in the investmt throf shl have been effected under the sd powers of varying investmts, then the value at the death of the sd A. of the investmts representing the sd sum of £—— Stock (*a*).] IN WITNESS whrof the sd A. has hrunto set her hand & seal this —— day of ——.

The Schdle above referred to.

[*Schedule of Investments.*]

Signed, sealed, & delivered by the above-named A. in the presence of (*b*).

II.

APPOINTMENT (*c*) *by* DEED-POLL *endorsed on the* SETTLEMENT *creating the power by a* WIDOW *of* PART *of a* SUM *of* STOCK *to a* SON *on his* MARRIAGE, *and* RELEASE *by the* APPOINTOR *of her* LIFE INTEREST (*d*), *there having been a previous endorsed* APPOINTMENT *of* NEW TRUSTEES. VARIATIONS *where a sum has previously*

(*a*) As to the validity of this clause, see *Re Buckley*, [1893] W. N. 95. It was decided in *Re Kelly*, [1910] 1 Ch. 78, that for the purpose of the usual hotchpot clause, specifically appointed stock must be valued as at the date of the death of the tenant for life. Where as in the above precedent no surrender of the life interest is made or contemplated, the rule thus laid down will usually be in accordance with the intention. It is thought, however, that the above express provision may sometimes be useful for the guidance of the trustees, especially in cases where changes of investment are likely to occur during the lifetime of the tenant for life.

(*b*) See Preliminary Note. Notice of the appointment should be given to the trustees of the settlement.

(*c*) This deed does not require an *ad valorem* stamp as the power exercised is a special power, and the release is made in consideration of marriage.

As to the advancement clause.

(*d*) Where it is desired to make an immediate advance to a child by way of portion on marriage or otherwise, this may be done, in the case of a settlement made after the commencement of the Trustee Act, 1925, under the statutory power of advancement and, in the case of a settlement made before that date, under the express power, if sufficiently wide (see a form of consent by a tenant for life for this purpose, *post*, "Direction and Consent"), instead of by appointment and release of the life interest of the parent or parents as in this Precedent. The latter course, if the case so admits, is often adopted to relieve the trustees from responsibility. The release of the life interest would seem to be a voluntary settlement or transfer of property liable to be avoided under s. 42 of the Bankruptcy Act, 1914; but though the beneficiaries might be accountable, the trustees could hardly be so; see Vol. 2, "SETTLEMENTS (PERSONAL)."

been advanced to the SON, *and where* EXPRESS PROVISION *is made as to the application of the* HOTCHPOT CLAUSE *contained in the* SETTLEMENT.

A DEED OF APPOINTMENT made by the above-named (*e*) A., formerly the wife & now the widow of the within-named B. Recitals.
WHAS the sd B., the late husbd of the sd A., died on the —— day of —— : AND WHAS no apptmt was ever made by the sd A. & B. under the joint power of apptmt vested in them by the within written indre of settlemt (*f*) : AND WHAS the trust funds now remaing subjt to the trusts of the sd indre consist of the sum of £—— Debenture Stk of the —— Rly Co, & £—— Stk of the Bank of England, standg in the names of the above-named L. & M. the psnt trees throf: AND WHAS a marre is intd shortly to be solemnised betn C., one of the chln of the sd A. & B., & D., of, &c., & the sd A. is desirous of apptg to the sd C. the sum of £—— Bank Stock, pt of the sd sum of £—— Bank Stk, [in addon to the sum so advced for his benefit as afsd], & of surrenderg to him her life intt in the same in mner hrinar mentd: NOW THIS DEED WITNESSETH that, in exercise of the power in that behalf given to her by the sd indre, & of every other power enablg her thrunto, the sd A. hby irrevocably appts that [in the event of the intd marre of the sd C. & D. taking place within six calr months from the date of these psnts (*a*)] the sum of £—— Bank Stock, pt of the sd sum of £—— Bank Stk, shl immedly after the solemnison of the intd marre [throf] vest in & be held in trust for the sd C. for his absolute benefit free from all duties wch will be

Death of husband.
No previous appointment.
State of funds.
Intended marriage &c.
Witness.
Appointment to take effect on the intended marriage.

(*e*) The words "above-named" have reference to the prior endorsed deed, which is supposed to contain a recital of the marriage. Otherwise that recital should be inserted: see Precedent V., p. 100, and compare the form of appointment by supplemental deed, *infra*, p. 95.

(*f*) Where an advancement has been previously made, insert "AND WHAS, on the —— day of ——, the sum of £—— New £3 p.c. annuities, pt of the trust funds then subjt to the trusts of the sd indre of settlemt, was sold out by the trees throf, and the proceeds throf were applied for the advancemt in the world of C., one of the chln of the sd A. & B., with the consent of the sd A., psuant to the power in that behalf in the same indre contd."

Advancement to a child.

(*a*) If the proviso at the end of the deed is omitted, the words in this bracket must be inserted in order to avoid infringing the rule against perpetuities.

payable in respt throf on the death of the sd A., wch shl be charged upon & payable out of the residue of the trust funds comprd in the sd settlemt (*b*) : [And the sd A. hby further appts that the share to be brought into hotchpot & accounted for by the sd C. under the provision in that behalf contd in the sd indre of settlemt in respt of the sd sum of £—— Bank Stk hby appointed to him shl be deemed to be a sum of £—— sterling (being the psnt value of the sd sum of £—— Bank Stk) (*c*)] : AND THIS DEED FURTHER WITNESSETH that, in conson of the intd marre, the sd A. hby assns & surrenders to the sd C., the life intt of her, the sd A. in the sd sum of £—— Bank Stk hrinbfe appted, to the intent that the sd C. may immedly upon the solemnison of the intd marre become absolutely entitled in posson to the sd sum of £—— Bank Stk, & that the same may be immedly transferable by the trees or tree of the sd settlemt to the sd C.: PROVD ALWAYS, & the sd A. hby declares, that if the sd now intd marre shl not take place within six calr months from the date hrof, these psnts & everythg hrin contd shl be void (*d*). IN WITNESS, &c.

Release of life interest to take effect on the marriage.

Appointment to be void if marriage does not take place.

(*b*) See *ante*, p. 90, note (*d*). In the case supposed in the above precedent, estate duty will have been paid in connection with the death of the husband, and will not again become payable on the death of the widow. Had the widow taken an only life interest under the will of her father or mother, estate duty would become payable on her death, and notwithstanding the surrender of her life interest, the settled property would for the purpose of the Fin. Act, 1894, and Amending Acts, be deemed to pass on her death at any time within 3 years from the date of the surrender. It would make no difference, apparently, that the surrender were made, as in the text, in consideration of marriage: Fin. Act, 1900, s. 11; Fin. (1909–10) Act, 1910, s. 59, (1) (2).

Effect of surrender on duties payable.

It is clearly more convenient to make the appointment free of duties, otherwise succession duty will have to be compounded for and paid in advance.

(*c*) See *ante*, p. 92, note (*a*). Where a surrender of the life interest is made or contemplated at the time of the appointment it will usually be more in accordance with the intention that the sum of stock appointed should be taken by the appointee for better or worse as a definite share of the settled funds rather than that it should subsequently be accounted for at its value as at the death of the tenant for life.

(*d*) This proviso is proper in regard to the assignment and surrender and necessary in regard to the appointment unless made conditional on the marriage taking place within the time allowed by the rule against perpetuities: see *Page* v. *Horne*, 11 Beav. 227; *Mitford* v. *Reynolds*, 16 Sim. 130; *Essery* v. *Cowlard*, 26 Ch. D. 191; *Bond* v. *Walford*, 32 Ch. D. 238. As the fund in this case is to be immediately transferred to the appointee, there is no need to give notice of the appointment to the trustees, especially if it is endorsed. As to rescission see *ante*, p. 87.

As to making appointment void if marriage does not take place.

III.

APPOINTMENT *by* SUPPLEMENTAL DEED POLL *by* HUSBAND *and* WIFE *of a* SUM *of* MONEY *to a child.* VARIATION *in operative part* (*e*) *where the* APPOINTMENT *is by the* SURVIVOR *of a sum of money to be paid* IMMEDIATELY *accompanied by a* SURRENDER *of the* PRIOR LIFE INTEREST.

A DEED OF APPOINTMENT made by A., of &c., *the husbd,* & B. his wife. WHAS these psnts are suppl to an indre of settlemt (hrinar called the ppal indre) dated, &c., & made, &c., in conson of the marre shortly afterwards solemnised betn the sd A. & B.: AND WHAS the sd A. & B. are desirous of making such apptmt in favour of C., one of their chldn as is hrinar contd: NOW THIS DEED WITNESSETH that in exercise of the power in that behalf given to them by the ppal indre & of every other power enabling them thereunto the sd A. & B. hby irrevocably appt that (*a*) subjt & witht prejudice to the trust in the ppal indre contd in relation to the income of the trust funds & ppty comprised in or wch are now or may at any time hereafter become subjt to the trusts of the ppal indre during the lives & life of the sd A. & B. & the survor of them & to the power of varying investmts contd in the ppal indre the sum of £—— sterling shl be a

(*e*) Where this variation is used, the death of the deceased parent must of course be recited. The remaining variations are obvious and are therefore omitted.

(*a*) The following short form is applicable to the case of an appointment by a surviving parent where the life interest being surrendered the appointed sum is to be paid immediately:—"That the net sum of £—— sterling shl forthwith be raised by the trees of the ppal indre by sale of a sufficient pt of the sum of £——, etc. forming pt of the trust funds and ppty comprised thrin & shl be pd by them to the sd C. clear of all deductions & free from all duties, &c., *continue as in text mutatis mutandis.* And in order to enable the sd sum of £—— to be raised & pd to him as afsd, the sd —— hby releases & surrenders his [her] life intt thrin to & in favour of the sd C. absolutely."

Where an appointment in defeasance of the prior life interest is authorised by the power (as to which see 2 Vaisey, 1218) no surrender is of course necessary.

charge upon & raisable out of the sd trust funds & ppty for the benefit of the sd C.: And shl on the death of the survor of them the sd A. & B. be raised & pd thereout to the sd C. accordingly [clear of all deductions (*b*) & free from all duties (*c*) which will become payable in respt throf on the respective deaths of the sd A. & B. (*d*) (which & the costs of raising & paying the same & of raising & paying the sd sum of £—— hby appointed shl be borne by & pd out of the residue of the sd trust funds & ppty)]: And shl carry intt at the rate of £4 p.c. p.a. from the date of such death until actual paymt throf (*e*). In witness, &c.

IV.

APPOINTMENT *by* Independent Deed *without* Recitals (*f*) *by* Husband *and* Wife *to a* Daughter, *on her* Marriage (*g*), *of a certain* Aliquot Share *in the* Trust Funds *comprised in their* Marriage Settlement (*h*). Variations, *where a* Further Share *is*

(*b*) Apart from express direction, the rateable part of the costs of realization and distribution, including the costs of raising a sufficient amount to pay the duty, must be borne by the appointed fund: *Re Hill*, 75 L. T. 477; *Re Chisholm*, [1902] 1 Ch. 457. An appointment of a "clear" or "net" sum of money discharges the appointed fund from liability in respect of both duty and costs; *Re Currie*, 36 W. R. 752; *Re Saunders*, [1898] 1 Ch. 17; *Re Coxwell*, [1910] 1 Ch. 63; *Re Grant* 85 L. J. Ch. 31; see also *Re Earl of Egmont's S. E.*, [1912] 1 Ch. 251; and cf. *Re Earl Cadogan*, 56 Sol. J. 11.

(*c*) See *ante*, p. 90, note (*c*).

(*d*) See *ante*, p. 90, note (*d*).

(*e*) Payment of interest at this rate if not directed will be implied: *Re Hill*, 75 L. T. 477; and see *Re Davy*, [1908] 1 Ch. 61; *Re Grant*, *supra*; *Re Cooke*, [1916] 1 Ch. 480, 490.

(*f*) See *ante*, p. 88, note (*a*).

As to appointments on a bargain.

(*g*) Such an appointment is usually made in contemplation of the appointed share being settled; the appointment may in that case be contained in the same deed as the settlement, but is usually separate; see Vol. 2, "Settlements (Personal)." As to the validity of appointments on a bargain for a settlement on marriage or otherwise, see 3 Dav. Prec., 4th ed., pt. 1, pp. 149, 150, note; *Re Turner's S. E.*, 28 Ch. D. 205; *Re Crawshay*, 43 Ch. D. 615; *Saunders* v. *Shafto*, [1905] 1 Ch. 126; *Knowles* v. *Morgan*, 54 Sol. J. 117.

As to alternative form.

(*h*) This form, securing a fixed share to the child about to marry, is a common mode of appointment; but if some of the children are minors, or there is a possibility of more children being born, and the object is to secure

appointed by way of ACCRUER *in the event of another* CHILD *dying under age, where there has been a previous partial* APPOINTMENT *to another* CHILD, *and the whole of the remaining* TRUST FUNDS *are appointed,* SUBJECT *to a* LIMITATION *of a* TOTAL AMOUNT, *and where the* SHARE *is* SETTLED.

THIS DEED OF APPOINTMENT made by us, A., of, &c., *the husbd,* & B. his wife, in psuance of an agrmt entered into upon the treaty for a marre shortly to be solemnised betn our daur C., & D., of, &c., WITNESSETH that in exercise of a power given to us by an indre of settlemt dated, &c., & made, &c., & of every or any other power in this behalf us enablg, WE hby irrevocably appt that, in the event of the intd marre of the sd C. & D. taking place within six calr months from the date of these psnts (*i*) & subjt & witht prejudice to the trust in the sd indre contd in relation to the income of the trust funds & ppty for the time being subjt to the trusts throf durg the lives of us, the sd A. & B., & the life of the survor of us, & to the power of varyg investmts contd in the sd indre (*a*), one equal —— pt or share of the trust moys, stks, funds, secs, & ppty comprd in or subjt or wch, by means of the accruer of other ppty under the provon in the sd indre contd for the settlemt of after-acquired ppty (*b*), shl at any time hrafter become subjt to the trusts of the sd indre of

Appointment to daughter, subject to life interests, of aliquot share.

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to the child indefeasibly the share which he or she would have taken in default of appointment, neither less nor more, the next Precedent should be used.

(*i*) The vesting must not be postponed beyond the period allowed by the rule against perpetuities.

(*a*) It is usual though not strictly necessary expressly to reserve the power of varying investments. Upon a partial appointment, the range of authorised investments cannot be extended as regards the property which remains subject to the trusts in default of appointment: *Re Falconer*, [1908] 1 Ch. 410.

(*b*) These words do not extend to an addition made to the settled funds by means of a gift of money to be held on the trusts of the settlement. If a fund has already been added to the settled funds by any such means it should of course be specifically noticed: see *Re Curteis*, L. R. 14 Eq. 217. If property has been directed by any instrument to be held on the trusts of the settlement the appointment should be made not only under the power in the settlement, but also under the power conferred by that instrument by reference to the settlement: *Re Walpole*, [1903] 1 Ch. 928; but it will suffice if the property subject to the power is referred to; Farwell, 3rd ed., 201.

As to subsequent addition to the settled funds.

settlemt (*c*) (*d*) (*e*) shl, from & after the solemnison of the sd intd marre of the sd C. & D. (*f*), belong to & be vested in the sd

Form providing for accruing share,

(*c*) The following addition is adapted to the case of the appointment extending to a further share by way of accruer in the event of a younger child who is under age dying without attaining a vested interest: "AND further that in case our daur X. shl die before attaing the age of twenty-one yrs, & witht havg been married, then & in such case (subjt & witht prejudice as afsd) a further one eql —— share of one eql —— share of the trust premes after deductg from such last-mentd one —— share any sum or sums wch may have been pd or applied thereout for the advancemt or benefit of the sd X., & after addg to such one —— share any accumulons of surplus income wch may have arisen from the expectant share of the sd X., after providg for her maintce & educon, shl from & after the solemnison of the intd marre belong to & be vested in the sd C., & be held in trust for her, absolutely, & shl be transferable to her upon the death of the survor of us the sd A. & B. or upon the death of the sd X., wchever shl last happen, in addon to the one —— share hrinbfe appted to the sd C., sò as to make the total share of the sd C. in that event one eql —— pt of the trust premes, after makg such deductions or addons (if any) as last afsd." If the variation in note (*d*) is adopted, insert after the words "trust premes" when they occur, the words "& sum advanced as afsd."

(*d*) Where an advancement has been made previously to the appointment, care must be taken to ascertain whether the intention is to appoint a share of what the trust funds actually consist or a share of what they would consist if no such advancement had been made: see *Re Fox*, [1904] 1 Ch. 480. If the latter is intended, the advancement should be recited and the following inserted at this point: "including in the ppty so comprised the sd sum of £— so advanced to the sd — as afsd"; or, if convenient, the aliquot share expressed to be appointed may be fixed in reference to the property actually comprised in the settlement at the date of the appointment. Compare the form in the next precedent.

or, all the remaining funds.

(*e*) "All & singr the trust funds & ppty comprised in or subjt or wch by means, &c., *as above* to the trusts of the sd indre of settlemt, & wch shl remain after satisfyg a certain previous apptmt in favour of X., one of our chln, made by a deed poll under our respective hands & seals, dated, &c."

Appointment settling the appointed share.

(*f*) If the power is to appoint to issue generally, and it is desired to settle the share appointed by the deed of appointment so far as the rule against perpetuities will allow, say, "be held upon the trusts following (that is to say):—Upon trust for paymt of the income

C. & be held in trust for the sd C. absolutely [for her separate use (*g*)], & shl be transferable forthwith upon the death of the survor of us, the sd A. & B. (*a*). IN WITNESS, &c. (*b*).

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of the sd share & the ppty representg the same unto the sd C. durg her life, but durg the period of twenty-one yrs to be computed from the death of the survor of us the sd A. & B. for her separate use witht power of anticipon. And after the death of the sd C. then & as to as well the capl of the sd share as the future income throf, Upon trust for all & every the chln & child of the sd C. who shl be born durg the lifetime of the survor of us the sd A. & B., & who, being male, shl attain the age of twenty-one yrs, or being female, shl attain that age or marry, and for all & every the chln & child of the sd C. who shl be born after the death of such survor, & who, whether male or female, shl be living at, or who being females shl marry before the expiration of twenty-one yrs from the death of such survor, & so that the objects of this trust, if more than one, shl take in eql shares as tenants in common; see *Re Thompson*, [1906] 2 Ch. 199. *Re Paul*, [1921] 2 Ch. 1; and as to the period of 21 years, computed from the death of the survivor of the appointors, see *English* v. *Cliff*, [1914] 2 Ch. 376. An appointment under a power in a marriage settlement of income in trust for a child, the amount varying in accordance with circumstances to be ascertained in each year, has been held to be altogether void for remoteness: *Re Whiteford*, [1915] 1 Ch. 347.

(*g*) If the appointment is under a power contained in a settlement in modern form omitting express reference to the separate use, the words in this bracket should also be omitted. As to separate use.

(*a*) If the whole of the remaining funds are to be appointed, subject to a limitation of the total amount, add, "PROVD ALWAYS, & we the sd A. & B. hby declare, that not more than the [net] sum of £—— sterlg is in any event intd to be hby appted, & that in case by means of the accruer of other ppty, wch shl become subjt to the sd provon for the settlemt of after-acquired ppty or orwise the trust funds & ppty subjt to the trusts of the sd indre of settlemt, & now remaing unappted, shl [after all pper deductions for duty & costs] exceed in value such sum (such value to be ascertained in such mner as the trees or tree for the time being shl think fit) then the sum of £—— sterlg only shl upon the death of the survor of us, the sd A. & B., be raised & pd to the sd C., her exs, ads, or Proviso limiting total amount appointed.

(*b*) Notice of this appointment should be given to the trustees of the settlement.

V.

APPOINTMENT, *endorsed on the* SETTLEMENT *creating the power, to a* SON *on his* MARRIAGE, *of the* SHARE *which he would have taken in* DEFAULT *of* APPOINTMENT, *subject to the* DEDUCTION *of a sum* ADVANCED *to him during his* MINORITY.

Recitals. Marriage. State of family. Advancement to appointee and other children. Witness. Appointment subject to life interests, and if marriage take place, of the share which the appointee would have taken in default of appointment.

A DEED OF APPOINTMENT made by the within named A. & B., his wife, formerly L. within named. WHAS the marre of the sd A. & B. was duly solemnised shortly after the date of the within written indre: AND WHAS there have been issue of such marre seven chln, includg a son C., who has attained the age of twenty-one yrs: AND WHAS in the yr —— the sum of £—— was, with the consent of the sd A. & B., raised out of the trust funds comprd in the sd indre & applied for the advcemt of the sd C. & the expses incidental thereto, & advcemts have also been & may hrafter be made in favour of others of the sd chln in respt of their expectant shares of the sd trust funds under the power in that behalf within contd: *Intended marriage of C. & D.*, p. 93: *Desire to appoint*, p. 90: NOW THIS DEED WITNESSETH that in exercise, &c., the sd A. & B. hby, subjt & witht prejudice to their respective life intts under the trusts of the sd indre, absolutely & irrevocably appt to the sd C., in the event of the intd marre of the sd C. & D. being solemnised within six calr months from the date of these psnts, such a pt or share of the trust moys, stks, funds, secs, & ppty wch are now or may hrafter be comprised in or subjt to the trusts of the sd indre (includg in the ppty so comprised (*c*) the sum of £—— so pd or applied for the advancemt of the sd C. as afsd, & any other sums wch have been or may be advanced for the benefit of any of the sd chln under the powers afsd, & also any income & accumulons of income), as the sd C. wd take or be entitled to if no apptmt

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assns, with intt, from such death until the raising & payment throf at the rate of 4 p.c. p.a., & that the residue of the trust premes after satisfyg the sd previous apptmt, & raisg such sum of £——, & intt, shl remain unaffected by these psnts."

As to the incidence of duty and costs, see *ante*, p. 96, n. (*b*).

(*c*) See *ante*, p. 98, note (*d*).

were made by the sd A. & B., or the survor of them, under either of the powers by the same indre given to them, or the survor of them, in that behalf, & the whole of the trust premes were to devolve under the trusts in the sd indre contd in default of any exercise of either of such powers, & so as to be divisible in eql shares among the chln of the sd A. & B., who, being male, attain the age of 21 yrs, or being female attain that age, or marry under that age, regard being had to the advance wch has been made of the sum of £—— for the benefit of the sd C., wch is to be brought into hotchpot, & accounted for by him in the same mner as if no apptmt had been made as afsd, & regard being also had to any other advcemts wch have been or may be made under the afsd power in that behalf, & to the operon & effect of that power, & the powers & provons for maintce & educon, & the accumulon & destinon of surplus income contd in the sd settlemt or arisg by statute, wch shl resply remain exercisable & applicable in all respts in the same mner as if this apptmt had not been made, to the intent that the share wch the sd C. wd have so taken in the trust premes as afsd, shl become & be an absolutely & indefeasibly vested & transmissible intt immedly on the solemnison of the intd marre, & be transferable immedly on the death of the survor of the sd A. & B., or as soon afterwards as such share shl be ascertained, & the case will admit. In witness, &c. (*a*).

Advancements to be brought into hotchpot.

VI.

APPOINTMENT *under a* Power *in a* Will *by a* Husband *and* Wife, *subject to their* Life Interests, *of* Trust Funds *invested in* Stock *and on* Mortgage, *to* Children, *so as to* Exclude *one who is otherwise provided for, the* Funds *being appointed* Unequally. Variations *where the* Funds *are appointed to all the* Children (*exclusive of one*), *born and to be born, at twenty-one or marriage* Equally, *and where a* Power *of* Revocation *is reserved.*

A DEED OF APPOINTMENT made by A., of, &c., & B., his wife. Whas X., late of, &c., deced, duly made his

Recitals.

(*a*) Although the appointment is endorsed, formal notice of it had better be given to the trustees.

Will. will dated, &c., & thby after appointing L. M. & N. to be exs & trees throf bequeathed to them the sum of £—— $2\frac{3}{4}$ p.c. [$2\frac{1}{2}$ p.c.] Consold Stk upon trust either to permit the same to remain in its then state of investmt, or with such consent, or at such discron as thrin mentd from time to time to vary & transpose the investmt throf as thrin expressed, And upon further trust to pay the income throf to the sd A. durg his life, & after his death to the sd B., if she shd survive him, durg her life, And after the death of the survor of the sd A. & B., in trust, *for their children as A. & B. should by deed appoint, setting out the material part of the power fully*, & in default of any such apptmt as the survor of them, the sd A. & B., shd in like mner or by will or codl appt, & in default of any such apptmt upon the trusts thrin expressed:

Payment of duty. *Death of testator & probate:* [And whas shortly after the death of the sd X. £—— Stk pt of the sd sum of £—— Stk, was sold, & the proceeds throf were applied in paymt of the settlemt este duty (*b*) on the sd sum of £—— Stk, & the sum of £—— Stk the residue of the sd sum of £—— Stk was appropriated by the sd L. M. & N., in satisfon of the sd legacy]; And whas N., O., & P. are the psnt trees of the sd will, the sd O. & P. havg been resply appted trees throf under a power in that behalf thrin contd in the place of the sd L., who had died, & the sd M., who had retired from the treeship: And whas the sd sum of £—— Stk was in the yr —— sold out, & pt of the proceeds throf invested in the pchase of £—— India Stk, & £—— the residue throf was invested on mtge of certn freehd ppty at ——, & the sd trust funds & mtge secy are now vested in the sd N., O., & P., upon the trusts of the sd will: And whas there have been issue of the marre of the sd A. & B. four

Change of trustees.

Change of investment.

Issue of marriage.

(*b*) See Fin. Act, 1896, s. 19; *Re Maryon-Wilson*, [1900] 1 Ch. 565; *Re Duchess of Manchester*, [1912] 1 Ch. at p. 560. Settlement estate duty is no longer leviable in the case of persons dying after the 11th May, 1914: see the Fin. Act, 1914, s. 14. In the case supposed in the precedent, estate duty will become payable on the death of A., subject to deduction of the amount of settlement estate duty paid on the death of X: see s. 14 (b); but no estate duty will become payable on the death of B: see *ante*, p. 90. As to the persons entitled to benefit in respect of the allowance of settlement estate duty, see *Re Booth*, [1916] 1 Ch. 349. The form of recital in this bracket can be adapted to cases where legacy duty was payable.

chln and no more, namely, C., D., E., & F., all of whom are now livg, & of whom the sd C. & D. have attained the age of twenty-one yrs: AND WHAS the sd A. & B. are desirous of apptg the sd trust funds among the sd D., E., & F., in mner hrinar appearg, the sd C. being orwise provd for: NOW THIS DEED WITNESSETH that, in exercise of the power in that behalf given to them by the sd will of the sd X., & of every, &c., *see* p. 90, the sd A. & B. hby [absolutely & irrevocably], appt that from & immedly after the death of the survor of them, the sd A. & B., & in the meantime subjt & witht prejudice to their life intts in the trust premes, the trees or tree for the time being of the sd will shl hold the sd sums of £—— India Stk, & £—— invested on mtge as afsd, or other the trust funds & ppty wch by means of any change of investmt or orwise shl hrafter represent the same resply, & the income throf, In trust for & for the absolute benefit of the sd D., E., & F., in the pportns & mner followg, namely, as to one moiety of the trust premes, in trust for the sd D.; as to one eql fourth pt throf, in trust for the sd E.; & as to the remaing one fourth pt throf, in trust for the sd F.: [*Or*, In trust for all the chln or any the child already born or hrafter to be born of the sd A. & B. his wife (other than & exclusive of the sd C.), who, being male, [has or have attained or] may hrafter attain the age of twenty-one yrs, or being female [has or have attained or] may hrafter attain that age or may marry, if more than one in eql shares], [AND so that the share of the sd F. [& of any other daur hrafter born of them, the sd A. & B.,] of & in the trust premes, shl be for her separate use (*b*)]: AND the sd A. & B. hby further declare that, *provisions for advancement, if necessary* (*c*): [PROVD

Desire to appoint.

Appointment.

To three children unequally,

or, to all the children, except one, equally at 21, &c. (*a*).

Shares of daughters to be for separate use.

Power of revocation.

(*a*) Where an appointment is made so as to exclude an eldest son, and the younger children are all under age, provision should be made for the possibility of their all dying without attaining a vested interest, by appointing the fund in that event to the eldest son. As to the frame of a trust of this kind, or excluding a son or daughter succeeding to the family estate, or a title, see Vol. 2, "SETTLEMENTS (PERSONAL)."

Younger children not attaining vested interests.

(*b*) See *ante*, p. 99, note (*g*).

(*c*) Where the appointment is made under a power in the will of a testator who died after 1925, the statutory power of advancement will apply (Trustee Act, 1925, s. 32); and no special provisions for advancement will be necessary. Where, however, the statutory power does not apply and the power of advancement contained in the settlement extends to

As to advancement, maintenance and accumu-

lation clauses.

ALWAYS, & the sd A. & B. hby declare, that they the sd A. & B. may at any time or times hrafter durg their joint lives, by any deed or deeds revocable or irrevocable, [or that the survor of them may at any time or times durg his or her life, in like mner or by will or codl], wholly or partially revoke the apptmt hrinbfe contd (*d*), & by the same or any other like instrumt appt & declare any new or other trusts or provons concerng the sd trust funds & premes, or any pt throf, wch may be or wd have been authorised by the power by the sd will given to the sd A. & B. [or the survor of them] in that behalf as afsd (*e*).] IN WITNESS, &c. (*f*).

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children only, and does not in terms apply to appointed shares, it may sometimes be advisable, if authorised by the power of appointment, to insert a provision for advancement either in full or by reference to the advancement clause contained in the settlement. Where, for instance, the power of advancement in the settlement being so limited, it is intended to make an appointment to a grandchild under a power of appointment containing the usual advancement clause; and *cf.* the limit of the power in *Re Greenslade*, [1915] 1 Ch. 155.

In *Re Hodgson*, [1913] 1 Ch. 34, Neville, J., following *McMahon* v. *Gaussen*, [1896] 1 Ir. R. 143, held that a power of advancement contained in a marriage settlement in favour of *any child of the marriage* was applicable as well to appointed as to unappointed shares, and expressed the opinion that, speaking generally, the exercise of a power of appointment would not operate to take the appointed share out of the provisions of the original settlement so as to defeat the advancement clause that that settlement contains. But see *Re Greenslade*, *supra*.

As to the expediency of relying on the provisions of s. 31 of the Trustee Act, 1925, as to maintenance and accumulation, see SETTLEMENTS.

Alternative form.

(*d*) The following is another form which may be substituted from this point, but the above form seems preferable:—"So & in such mner that the sd trust funds & premes shl so far as such revocon shl extend, stand settled in the same mner & subjt to the same power [or powers] of apptmt as if these psnts had not been exted."

Power of revocation.

(*e*) A power of revocation may be reserved by the appointment although not expressly authorised: Sugden on Powers, 8th ed., 367: 387; Farwell, 3rd ed., 303, and unless so reserved, the appointment cannot be revoked: *Worrall* v. *Jacob*, 3 Mer. 256. As, however, the original power is fiduciary and not capable of delegation or extension (see *ante*, pp. 84, 86), the power of revocation must not, as regards the person to whom it is given, or the mode of execution (namely by deed or will), go beyond the original power. It may be reserved to the survivor of the appointors where this accords with

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(*f*) Notice of this appointment should be given to the trustees of the will.

VII.

REVOCABLE APPOINTMENT *under* POWER *in* SETTLEMENT *of* PERSONALTY, *excluding eldest* SON, *some of the* CHILDREN *being under age.* VARIATIONS, *where there has been a previous absolute* APPOINTMENT *to one of the* CHILDREN, *and where the* SHARE *of a* CHILD *dying in the* LIFETIME *of the* PARENTS *is to go over to his or her* ISSUE, *or to the other* CHILDREN.

A DEED OF APPOINTMENT made by A., of, &c., & B., his wife. *Recite settlemt on marre of A. & B.* "hrinar called the settlemt" *contg usual power of apptmt among the chln or remoter issue of marre,* p. 89, *that there have been issue six chln, C. (eldest son), D., E., F., G., & H., of whom F., G., & H. are under* 21 (*a*) [*previous apptmt to D. (a daur), of one-fifth of trust funds on her marre*]. *Psnt state of investmt of trust ppty:* AND WHAS the sd C., the eldest son of the sd A. & B., being orwise sufftly provd for, the sd A. & B. are desirous that the whole of [the residue remaing unappted of] the sd trust funds & ppty shl be secd to their chln [or remoter issue] exclusive of the sd C., in such mner & subjt as hrinar appears: NOW THIS DEED WITNESSETH that in exercise of the power for that ppose given to them by the settlemt as afsd, & of every, &c., the sd A. & B. hby appt that the trees or tree for the time being of the settlmt shl from & after the death of the survor of them, the sd A. & B., & in the meantime subjt to their respective life intts [*if the whole or part of the ppty in settlemt*

Recitals.

Desire to appoint.

Appointment,

subject to life interests,

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the original power: *Brudenell* v. *Elwes,* 7 Ves. 382; *Dixon* v. *Pyner,* 55 L. J. Ch. 566: *Re Harding,* [1894] 3 Ch. 315; *Re Weightman,* [1915] 2 Ch. 205; but if the original power was given to the husband and wife jointly, and to the husband if he survived, a power of revocation reserved to the wife if surviving would be bad: *Burnaby* v. *Baillie,* 42 Ch. D. 282. It is desirable also that the appointment should, as regards the formalities of execution, conform to the original power, though this is not essential see Sugden on Powers, 8th ed., 366; L. P. Act, 1925, s. 159. As to the effect of a power of revocation, see *Saunders* v. *Evans,* 8 H. L. Cas. 721.

(*a*) See *ante,* p. 103, note (*a*), as to the case of the younger children being all under age. This Precedent assumes that there will be no more children. For a form extending to future born children, see the last Precedent.

is reversionary, say, " & subjt to any subsistg prior life or other intt or intts in the same "] stand possed of the whole of [the residue now remaing unappted of] the trust funds & premes comprised in or wch are now or hrafter may be subjt to the trusts of the settlemt in trust (*b*) for such of them, the sd D., E., F., G., & H., as, being male, have attained or shl attain the age of twenty-one yrs, or being female, have attained or shl attain that age or marry under that age, if more than one

to children.

(*b*) If there has been a previous appointment to one of the children, D., who is only to participate in any accruing share, say " In trust for the sd E., F., G., & H. in eql shares [and as to such of them as are female for their respective separate use]: PROVD ALWAYS, & the sd A. & B. hby further appt, that if any of them, the sd F., G., & H., shl die being male, under the age of twenty-one yrs, or being female, under that age & witht having been married, then the share as well origl as accrug under this psnt clause of such one of them so dying shl accrue & go over to the others or other of them the sd D., E., F., G., & H., in eql shares.

Accruer on death under age or unmarried.

The following is a form of accruer clause, to be substituted for the above accruer clause, where the power of appointment extends to grandchildren, & it is desired to give over the share of any child dying in the lifetime of the parents to his issue, or in default of issue to the other children: " PROVD ALWAYS, & the sd A. & B. hby further appt that if any of them, the sd E., F., G., & H., shl die durg the lifetime of the sd A. & B., or of the survor of them, leavg a child or chln who shl be livg at the death of such survor, or if any of them other than the sd E. shl die after the death of such survor, under the age of twenty-one yrs, & leavg a child or chln, then such child or chln shl take in eql shares if more than one, the share or shares (whether origl or accrug as next hrinar provd), wch their parent wd if livg & attng the age of twenty-one yrs be entled to, and further that if any of them, the sd E., F., G., & H., shl die durg the lifetime of the sd A. & B., or of the survor of them, witht leavg issue who shl be livg at the death of such survor, or if any of them, other than the sd E., shl die after the death of such survor under the age of twenty-one yrs & witht leavg issue, then the share as well origl, &c.," as above. This mode of settlement is not, however, to be recommended. The ordinary trust whereby a child attaining 21, &c., takes an absolutely vested interest which he or she may settle on marriage, is much to be preferred. See Vol. 2, " SETTLEMENTS."

Accruer on death of child in parents' lifetime or under age and without issue.

in eql shares, [& as to such of them as are female for their respive septe use (*c*)]. *Power of revocon, see* p. 103. IN WITNESS, &c. (*e*).

VIII.

DEED POLL *making a Previous* REVOCABLE APPOINTMENT *under a* SPECIAL POWER *absolute by means of a* RELEASE *of the* POWER *of* REVOCATION, ENDORSED *on the* APPOINTMENT.

THIS DEED OF RELEASE made by the within-named A., WITNESSETH that the sd A, by virtue of every or any power enablg him in this behalf, whether under the within-mentd indre of settlemt or orwise, hby absolutely releases & gives up the power of revocon in the within-written deed poll contd, to the intent that the apptmt thrin contd in favour of the within-named B., [his exs, ads, & assns], shl become & be henceforth absolute & indefeasible (*a*).

Release of power of revocation (*f*).

IN WITNESS, &c.

(*c*) See *ante*, p. 99, n. (*g*).

(*e*) Notice of the appointment should be given to the trustees of the will.

(*f*) As to this release see L. P. Act, 1925, s. 155. The section applies so as to enable a married woman who is donee of a power of appointment and tenant for life, subject to a restraint upon anticipation under the same settlement, by deed to release a power of revocation reserved to her on a former appointment without the necessity of any acknowledgment: *Re Chisholm*, [1901] 2 Ch. 82.

(*a*) Another way is to reappoint to the appointee "dischged from the power of revocon & new apptmt" contained in the previous deed; but the form in the text is preferable. The requirements as to attestation, &c., as in the case of the original appointment, should be observed: see *ante*, p. 87, note.

IX.

PARTIAL REVOCATION *of a* PRIOR APPOINTMENT *and* RE-APPOINTMENT *securing to a* CHILD *on* MARRIAGE *a* SUM *of* MONEY *in lieu of his or her* ALIQUOT SHARE (*b*).

Recitals. A DEED OF APPOINTMENT made by A., of, &c., & B., his wife. *Recite settlemt creatg power; that C. is a child of A. & B.; previous revocable apptmt among chln:* AND WHAS upon

Treaty for intended marriage. the treaty for a marre intd shortly to be solemnised betn the sd C. & D., of, &c., it was agrd that the sd A. & B. shd revoke the apptmt in the recited deed poll contd, to the extent & in mner hrinar appearg, & shd make such new apptmt in favour of the sd C. as is hrinar contd, to the intent that the same shl be absolute & irrevocable, but subjt to the provo hrinar contd for avoidg these psnts in the event

Witness. hrinar mentd: NOW THIS DEED WITNESSETH that in psuance of the sd agrmt, & in exercise of the power for this ppose reserved to them by the recited deed poll as afsd, & of every, &c., the sd A. & B. hby revoke the apptmt made

Partial revocation. by the sd deed poll, so far as regards the one eql —— pt or share thby appted, in favour of the sd C. of the trust funds & ppty comprised in the sd settlemt: AND THIS DEED FURTHER WITNESSETH that in exercise, &c., the sd A. & B. hby revoke the trusts & provons by & in the recited deed poll contd of & concerng the trust funds & premes thby appted in favour of the chln of the sd A. by the sd B. other than the sd C. so far & to such extent as is necy to give effect to the apptmt hrinar contd but not further or

Appointment. orwise, AND under or by virtue of the power contd in the recited settlemt & of every, &c., hby, &c., *Apptmt of sum of moy to C., see Precedent III.*

Saving clause. PROVD ALWAYS that nothg hrin contd shl affect the apptmt in the sd deed poll of, &c., contd, except so far as the same is hrinbfe revoked. *Proviso avoidg deed in case of marre not takg place, see Precedent II.* IN WITNESS, &c. (*c*).

(*b*) For a form modifying a settlement by a partial exercise of a power of revocation, see Vol. 2, "SETTLEMENTS (PERSONAL)." The deed requires two 10*s.* stamps, one in respect of the revocation, the other in respect of the appointment.

(*c*) Notice of the deed should be given to the trustees of the settlement.

X.

APPOINTMENT *by a* FATHER, TENANT *for* LIFE *of Settled Real* ESTATES, *to one of his younger* CHILDREN, *of part of a* SUM *of* MONEY *raisable for* PORTIONS *under the* SETTLEMENT.

A DEED OF APPOINTMENT made by A., of, &c., *tenant for life.* WHAS by an indre, dated & made, &c. (being or now constituting for the ppses of the Settled Land Act, 1925, the trust instrument of a settlemt exted in contemplon of a marre wch was shortly aftwds solemnised betn the sd A. & B.), certain lands & ppty, in the parishes of —— & —— in the coy of ——, (hinar referred to as the settled lands) were assured & limited after the solemnison of the sd marre (among other uses not material to be hrin recited), to the use of the sd S. & T., for the term of 1000 yrs, to commce from the death of the sd A., witht impeachmt of waste, upon trust, *recite trusts of portions term, down to & includg the power of apptmt among the younger chln ;* AND WHAS by a vesting deed dated etc. and made pursuant to section 37 of the Settled Land Act, 1925, between the said S. & T. of the one part and the said A. of the or part the settled lands were duly vested in the said A. as estate owner in respect of the fee simple thereof upon the trusts & subject to the powers & provons requisite for giving effect in equity to the uses trusts powers & provons of the said settlemt ; AND WHAS there have been issue of the sd marre six chln, besides some who died in infancy & unmarried, that is to say, an eldest son & five younger chldn, one of whom attained his age of twenty-one yrs, & afterwds died, & the others of whom are all under that age & unmarried ; AND WHAS a marre is intd shortly to be solemnised betn C., one of such younger chldn, & D., of, &c., & in order to make provon

Recitals.

Settlement creating power (*d*).

State of family.

Intended marriage.

(*d*) If the appointment is made by supplemental deed (see *ante*, p. 88, note (*a*)) substitute for the recital of the settlement :—" WHAS this deed is suppl to an indre, dated, &c., being or now constituting for the ppses of the Settled Land 1925 the trust instrument of a settlement made on the marre of the sd A. of the —— este, &c., under the trusts whereof he has a power of apptmt over a sum raisable out of the sd estate for portions of his younger chln."

Variation for supplemental deed.

Desire to appoint.

for the sd C. on her marre, the sd A. is desirous of apptg the sum of £——, pt of the sum wch, in the event, will become raisable for portions under the trusts afsd, to or in favour of the sd C., in mner & subjt as hrinar mentd: NOW THIS DEED WITNESSETH that in exercise of the sd recited power & of every, &c., the sd A. hby irrevocably appts that, in case the intd marre of the sd C. shl take place within six calr months from the date hrof (*a*), the sum of £——, being a pt or share of the sum wch, in the event, will become raisable for portions under the trusts aforesd, shl, immedly after the intd marre of the sd C., belong to & be vested in the sd C. for her absolute benefit, & be payable upon the death of the sd A., with intt at the rate of £4 p.c. p.a. from his death until paymt throf [*if raisable immedly,* " & be raisable and payable immedly after such marre, with intt at the rate of £4 p.c. p.a. to be computed from the sd marre "] (*b*). In witness, &c. (*c*).

Appointment of share.

XI.

POST-NUPTIAL APPOINTMENT *by a* Married Woman *of* Life Interest *in* Personalty *to her* Husband *under a* Power *in a* Will. Variations *where the* Appointment *is* Revocable *and for an* Ante-Nuptial Appointment, *and for a determinable* Life Interest (*d*).

Recitals. Will.

THIS DEED OF APPOINTMENT made by me A., the wife of B., of, &c. Whas X., late of, &c., deced, by his will dated,

(*a*) See *ante*, p. 94, note (*d*).

As to charging interest.

(*b*) As to the power of the appointor to charge interest and to fix the rate, see Sugden, Powers, 8th ed., 697; *Balfour* v. *Cooper*, 23 Ch. D. 472; and as to the rate of interest where none is fixed, see *ante*, p. 96, note (*e*).

(*c*) Notice of this deed should be given to the trustees by whom the portions fund will be distributable.

Variation for ante-nuptial appointment.

(*d*) If the appointment is ante-nuptial, it will recite the intended marriage, and that " upon the treaty for the intd marre it was agrd that I the sd A. shd make such apptmt as is hrinar contd "; and the appointment will be expressed to be " in conson of the intd marre "; see Settlements.

As to determinable life interestto husband.

If the husband's life interest is to be determinable on bankruptcy or alienation, the form will be the same as in a settlement limiting a reversionary life interest so determinable (see Settlements): but the discretionary trust usually added to give a protected life interest must not be inserted, unless specially authorised by the power, as this would be bad as amounting to a delegation of the power; see *ante*, p. 86. T. Act, 1925, s. 33 (3).

&c., & proved on the —— day of —— in the —— Registry, bequeathed the sum of £—— to trees upon trust for my benefit durg my life & after my death upon the trusts thrin mentd, subjt to a power thby given to me by deed to appt from & after my death the whole, or such pt as I shd think fit, of the annl income of the sd legacy, or the trust funds representg the same, for the benefit of any husbd I might leave survivg me durg his life, or for any less period, & subjt to any restrons I might think fit: AND WHAS I am desirous of exercisg the power of apptmt reserved to me by the sd will as afsd in mner [& subjt as] hrinar expressed: NOW THIS DEED WITNESSETH that, in exercise of the power for this ppose given to me by the sd will as afsd & of every other power, &c., I hby appt that from & after my death, if my husbd the sd B. shl survive me, the whole of the income of the sd legacy of £——, or of the trust funds & premes for the time being representg the same, shl be pd to my sd husbd or his assns during his life: [PROVD ALWAYS & I declare that it shl be lawful for me at any time hrafter by deed wholly or partially to revoke the apptmt hrinbfe contd]. IN WITNESS, &c. (*e*).

Desire to appoint.

Appointment to husband for life.

Power of revocation.

XII.

APPOINTMENT *under a* GENERAL POWER (*f*) *in a* WILL *of* FREEHOLDS *in fee, subject to the* LIFE ESTATE *of the* APPOINTOR, *a* MARRIED WOMAN, *in the event of the* FAILURE *of her* ISSUE, PART *of the property being appointed to her* HUSBAND, *and the* REMAINDER *to another* MARRIED WOMAN.

A DEED OF APPOINTMENT made by A., the wife of B., of, &c. WHAS X., late of, &c., deced, duly made his will, dated, &c., & thby, among other disposons, devised certn freehd

Recitals.

Will.

(*e*) Notice of this deed should be given to the trustees of the will.

(*f*) This appointment will operate only in equity. On the death of the tenant for life, the present estate owner, without issue the settlement will come to an end and the property will devolve on her personal representatives upon trust for the respective appointees. Upon execution by the trustees of the settlement of the necessary deed of discharge (S. L. Act, 1925, s. 17) the personal representatives as estate owners will be bound to convey to the respective appointees.

messes, lands, & ppty situate in the parishes of, &c., in the coy of, &c., thrin more particularly described, to the use of [trees in trust for] the sd A., *for life, remainder to her issue, & in default of issue as she shd by deed or will appt, setting out the power fully,* " with remrs over " : *Death of X., & probate.* And whas under or by virtue of the assent in the year 19— of the sd *proving exors* to the sd devise & a ppal vesting deed dated &c., & made pursuant to the Settled Land Act, 1925, the sd devised premes became & are now vested in the sd A. as estate owner in respect of the fee simple thereof upon the trusts & subject to the powers & provons requisite for giving effect [in equity] to the [uses] trusts, powers & provons of the sd will (*a*) : AND WHAS the sd A. is desirous of makg such apptmt of the sd devised premes as is hrinar contd ; NOW THIS DEED WITNESSETH that the sd A., in exercise of the power for that ppose by reference to the sd will reserved to her by the sd vesting deed & of every, &c., *see* p. 90, hby [absolutely & irrevocably] appts that (subjt & witht prejudice to such of the trusts affecting the sd devised premes as have priority to the power of apptmt so now vested in her as afsd), the sd devised premes shl be held upon the trusts followg, that is to say : AS TO All that, *pcels* (*b*), being pt of the sd devised premes, & the property wch shl at any time represent the same (*c*), In trust for the sd B (*cc*) : And as to All & singr other the ppty devised by the sd will as afsd In trust for L., the wife of M., of, &c. (*cc*), [as her

Death, &c. Desire to appoint.

Appointment.

As to part to husband. Residue to a married woman (*d*).

(*a*) If the testator died before 1898 the property would have passed directly under the devise without any assent. If he died after 1897 and liberty to prove was reserved to one of several joint executors, the assent of the proving executors alone would prior to 1912 have been ineffectual. If the property remained vested in the proving executors at the commencement of the S. L. Act, 1925, they will have conveyed the property to the tenant for life either by deed or by means of a vesting assent pursuant to s. 37 of that Act. Second Schedule ; in which case the recital will run " AND WHAS under or by virtue of a ppal vesting deed [vesting assent] dated, &c., & made pusant to the Settled Land Act, 1925, the sd devised premes have become vested in the sd A., &c."

(*b*) The general words may be omitted, as an appointment is a conveyance within s. 62 of the L. P. Act, 1925, see s. 205 (ii).

(*c*) See *Beddington* v. *Baumann*, [1903] A. C. 13.

(*cc*) No words of limitation are required, L. P. Act, 1925, s. 60.

(*d*) Where an appointment is made to a married woman it may be proper to express an intention that the appointed property is not to be bound by a covenant to settle ; see Vol. 2, " SETTLEMENTS (PERSONAL)."

septe ppty (*e*),]: PROVD ALWAYS, that the sd A. may, at any time or times hrafter by any deed or deeds, revocable or irrevocable, or by will or codl (*f*), revoke or alter, either wholly or partially, all or any of the trusts hrinbfe appted & decld of or concerng the sd devised premes or any pt throf, & may appt or declare any new or other trusts or provons concerng the same or any pt throf. IN WITNESS, &c. (*g*). Power of revocation.

XIII.

REVOCATION *of* APPOINTMENT *made prior to* 1926 *of* LEASEHOLDS *under a* GENERAL POWER *in a* WILL, *and new* APPOINTMENT *thereof to the* ISSUE *of the original* APPOINTEE *upon his* DEATH.

A DEED OF REVOCATION & NEW APPOINTMENT made by A., the wife of B., of, &c. *Recite will bequeathg leasehd ppty to trees in trust for A. for life for her separate use, remainder as she may appt by deed or will, in default in trust as thrin mentd & apptg exors: Death of testator & probate; Assent of executors to bequest; Previous revocable apptmt to C.; Vesting deed vesting ppty in A.* "upon the trusts thrin decld by refce to the sd will & revocable apptmt"; death of C. "leavg a son, D., & two daurs, E. & F., him survivg, all of whom are now under the age of 21 yrs": *Desire to revoke & reappt:* NOW THIS DEED WITNESSETH that in exercise of the power for that ppose reserved to her by the sd deed of apptmt & of every, &c., the sd A. hby absolutely revokes & makes void the sd apptmt to the sd C., & in lieu throf she, the sd A., hby, in exercise of the power for that ppose so now by refce vested in her as afsd & of every, &c. [absolutely & irrevocably] Recitals. Will, &c. Death of previous appointee. Revocation. New appointment.

(*e*) See *ante*, p. 99, note (*g*).

(*f*) A mere general devise does not operate as an exercise of the new power of appointment; see Vol. 2, "WILLS," GIFTS OF RESIDUE.

(*g*) Notice of this deed should be given to the trustees of the settlement, see L. P. Act, 1925, s. 137 (2). The deed will require an *ad valorem* stamp, Fin. (1909–10) Act, 1910, s. 74; Fin. Act, 1920, s. 36 (2). The general power of revocation and new appointment renders the property appointed liable to estate duty on the death of the appointor under the F. Act, 1894; but the power of revocation may be subsequently released, Fin. (1909–10) Act, 1910, s. 59 (3), so as to exempt the appointed property from payment of estate duty in case the appointor survives for a period of 3 years from the date of the release.

appts & directs that All & singr the sd leasehd premes shall be held by her the sd A. subject to her own prior life interest therein In trust for such one or more of the sd D., E., & F., as shl attain the age of twenty-one yrs, or being the sd E. or F. shl marry, if more than one in eql shares, as tenants in common (*a*) : PROVD ALWAYS, & the sd A. hby further appts & directs that in case the sd D. shl die under the age of twenty-one yrs, & both of them the sd E. & F. shl die under that age, & witht havg been married, then from & after the death of the sd A., & such default or failure of issue of the sd C., wchever shl last happen, the sd trust premes, & the rents & income throf shl be held in trust for X., of, &c., absolutely : IN WITNESS, &c. (*b*).

Provision for death of all appointees under 21, &c.

XIV.

APPOINTMENT *by* DONEE *of* GENERAL POWER *of* RESIDUARY ESTATE *in his own favour* (*c*).

Recitals.

A DEED OF APPOINTMENT made by A., of, &c. *Recite will bequeathg residue in trust for A. for life, with remainder on such trusts as he may by deed or will appt : death & probate :*

(*a*) There is no objection to this form of trust. If and when the reversionary interest becomes an interest in possession in more than one of the appointees as tenants in common ; the settled land must be vested in the trustees of the settlement upon the statutory trusts, *i.e.* upon trust for sale, etc., under s. 36 of the S. L. Act, 1925. Powers of maintenance and provisions for the accumulation of surplus income are supplied by s. 31 of the T. Act, 1925 ; and the power of advancement conferred by s. 32 of the same Act will apply except in the case of one only of the three children surviving the appointor.

(*b*) Notice of this deed should be given to the trustees of the settlement created by the will. The deed will require an *ad valorem* stamp. A new appointment made under a general power upon the revocation of an earlier appointment appears equally liable to stamp duty as a conveyance or transfer under the Fin. (1909–10) Act, 1910, s. 74, with an original appointment.

Tenant for life with general power of appointment.

(*c*) It is not uncommon for a tenant for life to have a general power of appointment by deed or will over the reversion. In such a case it sometimes conduces to simplicity and saves trouble if he makes the property his own by an exercise of the power. For this purpose a formal appointment is usually necessary : *Reith* v. *Seymour*, 4 Russ. 263 ; *Hughes* v. *Wells*, 9 Hare, at p. 768 ; *Re Ryder*, [1914] 1 Ch. 865 ; although a simple assignment may in some cases operate as an appointment ; see *Marler* v. *Tommas*, L. R. 17 Eq. 8 ; *Foakes* v. *Jackson*, [1900] 1 Ch. 807. As to the amount of succession duty payable on the donee's death, see Succession Duty Act, 1853, s. 33, discussed in *Re Cooper & Allen*, 4 Ch. D. at p. 823 ; and see *Att.-Gen.* v. *Chambres*, [1921] 1 K. B. 173.

assent of executors to bequest: And whas the sd A. has determined to exercise the power of apptmt given to him by the sd will as afsd in mner hrinar expressed: NOW THIS DEED WITNESSETH that, in exercise, &c., the sd A. hby irrevocaby appts & directs that the residy este of the sd testor & the investmts & ppty constitutg or representg the same shl belong to & be vested in him the sd A., absolutely, & that the same shl be forthwith pd or transferred to him accdly. In witness, &c.

Appointment.

XV.

DEED POLL *by* Donee *of* General Power *of* Appointment *over* Real Estate *exercisable by* Deed *only, to enable him to* Charge *it by* Will.

A DEED OF APPOINTMENT made by A., of, &c., Whas by a vesting deed dated, &c., & made psuant to section 37 of the Settled Land Act, 1925, between, &c., & the statute in that behalf, certain ppty situate, &c., was vested in the sd A. (subjt to certn charges & incumbces affectg the same or some pts throf,) upon the trusts thrin decld by refce to a previously subsisting settlemt of the same ppty dated etc., that is to say, Upon such trusts & subjt to such powers & provons as the sd A. shld by any deed or deeds, revocable or irrevocable, appt, & in default of such apptmt upon other trusts not material to be herein mentioned: And whas the sd A. is desirous of exercising the power of apptmt so vested in him as afsd in mner hrinar appearing: NOW THIS DEED WITNESSETH that in exercise of the sd power & of every, &c., the sd A. hby appts that he, the sd A., may by his will or any codl thto charge all or any of the estes, lands, & ppty comprised in the sd vesting deed or wch by any means are or shl become subjt to the trusts throf, with such annl & gross sums & other moys (whether in the way of ppal or intt), as he, the sd A., shl think fit: Provd always, & the sd A. hby declares that the power of apptmt so reserved to him as afsd shl remain & continue exercisable by him, by deed in the same mner as if this deed had not been executed. In witness, &c. (*a*).

Recitals Settlement.

Desire to appoint.

Appointment enabling appointor to charge the settled estates by will.

Power in settlement to remain unaffected.

(*a*) Notice of this deed, which operates only in equity, should be given to the trustees.

XVI.

APPOINTMENT *by deed of a* GUARDIAN *by a* FATHER (*a*), *for his Infant* SON *and* DAUGHTER, *after his Death.*

Appointment.

THIS DEED OF APPOINTMENT made by me, A., of, &c., WITNESSETH that I hby appt B., of, &c., to be the guardian of my son, R., & daur S., *or*, " hby dispose of the custody & tuition of my son R., & daur S., to B., of, &c.," from & after my death durg the minority of my sd son & daur resply : BUT in case the sd B. shl die in my lifetime or durg the minority of my sd son or daur, or shl refuse to act, then I appt C., of, &c., to be the guardian of them resply after my death & the death or refusal to act of the sd B., durg their respective minorities. IN WITNESS, &c.

Substitution.

XVII.

APPOINTMENT *by* COMMITTEE *of* LUNATIC, *under a* POWER *contained in the* LUNATIC'S MARRIAGE SETTLEMENT, *to a* CHILD *of the* MARRIAGE *of* PART *of* CERTAIN FUNDS *comprised in the* SETTLEMENT. VARIATION *where the* LUNATIC *is* NOT SO FOUND BY INQUISITION (*b*).

Parties.

A DEED OF APPOINTMENT made by X., of &c., " committee of the este of A., a lunatic " [*or, if a lunatic not so found*

Appointment of guardian.

(*a*) Such a deed is in its nature testamentary and revocable by will : *Ex p. Earl of Ilchester*, 7 Ves. at p. 367 ; *Shaftsbury* v. *Hannam*, Finch, 323. An infant father, though now incapacitated from making a will, can appoint guardians by deed, 12 Car. 2, c. 24, s. 8 ; but the appointment must be subject to the rights conferred on the mother by the Guardianship of Infants Act, 1886, ss. 2 and 3. The execution should be attested by two witnesses ; but *qu.*, see *Morgan* v. *Hatchell*, 19 Beav. 86. See further as to the appointment of guardians, Vol. 2, "WILLS," APPOINTMENT OF EXECUTORS, &c., Elph. Introd., 7th ed., 565 ; and as to the powers of guardians, see 51 Sol. J. 5 : *Re Helyar*, [1902] 1 Ch. 391 ; *Re Lethbridge*, 61 Sol. J. 630. As to the appointment of a guardian for the purposes of the Agricultural Holdings Act, 1908, see s. 32 of that Act.

(*b*) A special power of appointment among children may be exercised by a person appointed under the Lunacy Act, 1890, s. 116, with the authority of the Judge (see s. 128) or Master (Lunacy Act, 1908, s. 1) on behalf of the donee who has become lunatic, whether so found by inquisition or not : *Re A.*, [1904] 2 Ch. 328. As to a person detained under the Mental Deficiency Act, 1913, see ss. 2, 11 and 67 of that Act ; and see *Re Whalley*, [1906] 1 Ch. 565.

by inquisition, "a pson of unsound mind not so found by inquisition, acting by X., of &c., as the pson appted to exercise the powers of a committee of his este"]. *Recite marriage settlement of A., that A. survived his wife, that B. is a child of the marriage, and present state of the funds, as in Precedent* 1. AND WHAS by an order in Lunacy dated, &c., in the matter of, &c., in an applicon bfe the Lord Justice ——, the sd X. was appted to be the committee of the este of the sd A. [the sd X. was appted to exercise the powers of a committee of the este of the sd A., a pson of unsound mind not so found by inquisition]: AND WHAS the only apptmts wch have been made in exercise of the power contd in the sd settlemt are those specified in the —— schdle hto: AND WHAS by an order of the Lord Justice —— made on the —— day of ——, in an applicon in the matter, &c., it was ordered that the sd X. as committee of the este of the sd A. shd exercise the sd power of apptmt in mner hrinar appearg: AND WHAS the Master in Lunacy (*a*) has settled & approved of these psnts as a pper apptmt psuant to the last-mentd order, & in testimony of such his approval the seal of the sd Master has been affixed in the margin hrof: NOW THIS DEED WITNESSETH that in psuance of the last mentd order & in exercise of the power for that ppose given to him by the recited settlemt as afsd, & of every &c., the sd X. acting on behalf of the sd A. as afsd hby *continue as at* p. 90.

Recitals.

Appointment.

Schdles.

XVIII.

APPOINTMENT *of a* GAMEKEEPER *by the* LORD *of a* MANOR (*b*).

KNOW ALL MEN that I, A., of &c., lord of the manor of ——, in the coy of ——, hby (by virtue of the statute in that

Appointment.

(*a*) See the Lunacy Act, 1922, s. 1.

(*b*) See 1 & 2 Will. 4, c. 32, ss. 13, 14, 16, and as to Wales, s. 15; 1 Byth. & Jarman, 4th ed., 787 *et seq.* The appointment must be registered with the Clerk of the Peace for the county or place within which the manor is situate (s. 16). As to game licences, see 23 & 24 Vict. c. 90; 24 & 25 Vict. c. 91, s. 17; as to licences to carry a gun, see 33 & 34 Vict. c. 57, ss. 1—5; 46 & 47 Vict. c. 10, s. 6. As to the right of an occupier to kill ground game, see *post, sub tit.* "LEASES (AGRICULTURAL)."

The stamp on the appointment is 10*s.*: Stamp Act, 1891, Schedule.

behalf) appt & depute B., of, &c., to be my gamekeeper within the sd manor durg my pleasure, & to preserve the game within the limits of the sd manor : And that I hby give him full power & authority [to kill the game within the limits of the sd manor for my use, *or*, " for his own use, or for the use of any other pson or psons whomsr," And also so far as the law allows] to seize & take within the sd limits for my use, *or*, " for his own use," &c., all such dogs, nets, & other engines & instrumts for the killg & takg of game as shl be used upon the sd lands by any pson not authorised to kill game for want of a game licence, And further to do & exte all acts & things wch may be requisite for the preservon of the game within the sd manor, & for the discovery of offenders thrin, accdg to the laws of this realm, & for wch this shl be his sufft warrant. In witness, &c.

Power to kill game and seize engines, &c.

XIX.

APPOINTMENT *of* PARISH CLERK.

NOTE.

The precedent for the appointment of a parish clerk, inserted in former editions, has been rendered obsolete by the Parochial Church Councils (Powers) Measure, 1921. Persons who were clerks of ancient parishes when the measure came into operation, hold office for life and at common law have a freehold in such office: as to the office of sexton in an ancient parish before the measure came into operation, see *R.* v. *Vicar of Dymock*, [1915] 1 K. B. 147. Parish clerks and sextons are now appointed, and, if appointed since the measure came into operation, may be dismissed, by the sector or vicar and the parochial church council jointly, by whom also the ralary and conditions of appointment are determined.

APPOINTMENTS OF NEW TRUSTEES.

PRELIMINARY NOTE.

Statutory provisions as to appointment of new trustees; T. Act, 1925, s. 36.

The power of appointing new trustees contained in The Trustee Act, 1893, was repealed by the T. Act, 1925, and by s. 36, re-enacted with amendments.

The power of appointing a new trustee under the T. Act, 1925, applies to the case of a trustee dying (expressly including (sub-s. 8) in the case of a will, death in the testator's lifetime), remaining out of the United Kingdom for more than twelve months: *Re Stamford*, [1896] 1 Ch. 288; *Re Walker*, [1901] 1 Ch. 259, desiring to be discharged, refusing or being unfit or incapable to act, or being an infant (a case not provided for by the T. Act, 1893). The power is vested in the person or persons, if any, nominated for the purpose of appointing new trustees by the instrument, if able and willing to act: *Re Sheppard*, [1888] W. N. 234; *Re Spencer*, 33 T. L. R. 16 (dissolved corporation); or otherwise in the surviving or continuing trustees or trustee (which by sub-s. 8 includes a refusing or retiring trustee if willing to act), or the personal representatives of the last surviving or continuing trustee. The statutory power applies, although the deceased or outgoing trustee was appointed by the Court.

Contrary intention.

Section 36 of the T. Act, 1925, applies (s. 69), if and so far as a contrary intention is not expressed in the instrument creating the trust, to trusts created either before or after the commencement of the Act, and will have effect subject to the terms of the instrument creating the trust; but that instrument will not be construed as indicating a contrary intention within s. 69 of the Act, so as to exclude the operation of section 36 merely because some only of the events mentioned in that section are specified either expressly (cf. *Re Coates*, 34 Ch. D. 370), or by the incorporation of some earlier enactment (cf. *Re Blake*, [1887] W. N. 173), as events in which new trustees may be appointed; or that a condition (*e.g.* that certain consents are to be obtained) is imposed on the exercise of the power contained therein. See *Cecil* v. *Langdon*, 28 Ch. D. 1; *Re Lloyd*, 32 Sol. J. 221.

In such cases the person nominated can appoint new trustees in the events mentioned in the instrument; but if there is no such person, or no such person able and willing to act, or if an event mentioned in the Act but not in the instrument happens, the appointment can be made under the Act by the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee: *Re Wheeler & De Rochow*, [1896] 1 Ch. 315; *Re Sichel*, [1916] 1 Ch. 358; and where by the instrument creating the trust there are persons nominated generally to appoint new trustees, then whatever be the date of the instrument the Act applies so as to enable those persons to make an appointment in any event mentioned in the Act: *Re Walker & Hughes*, 24 Ch. D. 698; *Re Wheeler & De Rochow, sup.*; and see *Re Boucherett*, [1908] 1 Ch. 180.

Case of trustees predeceasing testator.

Although the statutory power (as well as the ordinary express power) provides for the case of a trustee of a will predeceasing the testator, and in case of the death of all the trustees is exercisable by the personal representatives of the last survivor, it seems doubtful whether it would be available in case all the trustees should predecease the testator: *Re Orde*, 24 Ch. D. 271; but see *Re Ambler*, 59 L. T. 210; *Nicholson* v. *Field*, [1893] 2 Ch. 511.

Trustee disclaiming.

A disclaiming trustee is conceived to be undoubtedly a refusing trustee within the statutory or the ordinary express power, although by the effect of the disclaimer he technically never became a trustee; see *post*, p. 149.

Bankruptcy.

A bankrupt trustee is not "incapable of acting" (*Re Watts*, 9 Hare 106), though he may be, and is if he has absconded, "unfit to act" in the trusts within the meaning of an express or the statutory power of appointing a new trustee independently of the Court; *Re Roche*, 2 Dr. & War. 287; *Re Harrison*, [1883] W. N. 31; *Re Wheeler & De Rochow*, [1896] 1 Ch. 315; *Re Sichel*, [1916] 1 Ch. 358.

Case of dissolved corporation.

A trustee corporation which has been dissolved is deemed (sub-s. 3) to be and to have been from the date of the dissolution incapable of acting in the trusts within the meaning of section 36; and a trustee who has been removed under a power contained in the instrument creating the trust is for the purposes of a new appointment to be considered (sub-s. 2) as dead, or, in the case of a corporation, as desiring to be discharged from the trusts within the meaning of the same section.

Trustee removed under power in trust instrument.

A lunatic trustee is "incapable of acting" within the meaning of an express or the statutory power of appointing new trustees: *Re East*, L. R. 8 Ch. 735; *Re Blake*, [1887] W. N. 173; *Re Cutler*, 39 Sol. J. 484; but in the case of a lunatic or defective trustee who is also entitled in possession to some beneficial interest in the trust property, the statutory power cannot be exercised by the continuing trustees or trustee unless leave has been given by the Judge or Master in Lunacy to make the appointment (sub-s. 9).

Lunacy.

Infirmity and other cases.

A statement in the deed of appointment to the effect that a trustee has remained out of the United Kingdom for more than twelve months or refuses or is unfit to act, or is incapable of acting will afford protection (section 38) to the purchaser of a legal estate in the land subject to the trust. As a general rule, however, the statutory power should not be exercised in any case where the validity of the appointment must depend upon the proof of facts not easily susceptible of proof at the date of the appointment, or which by lapse of time may become so. In such cases the proper course is to apply to the Court to make an appointment under s. 41 of the T. Act, 1925.

Power of Court to appoint: T. Act, 1925, s. 41.

By the last mentioned section the Court is empowered whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, to make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee, and in particular to make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony (see *Re Danson*, 48 W. R. 73) or is a lunatic or a defective (as defined by the S. L. Act, 1925, s. 117 (xiii.); T. Act, 1925, s. 68 (15)) or is a bankrupt (see *Re Barker*, 1 Ch. D. 43; *Re Adams*, 12 Ch. D. 634; *Re Hopkins*, 19 Ch. D. at p. 63; *Re Betts*, 41 Sol. J. 209; *Re Wheeler & De Rochow*, [1896] 1 Ch. 315; *Re Fitzherbert*, [1898] W. N. 58), or is a corporation which is in liquidation or has been dissolved. Under this

section the Court has power to appoint a new trustee to act with an executor or administrator where, the debts and expenses having been paid and the estate cleared, such executor or administrator has become a trustee for the persons beneficially entitled : *Re Ponder*; [1921] 2 Ch. 59 ; and by s. 43 trustees so appointed are to have all the same powers (including of course the powers of s. 36) as if they had been originally appointed by the instrument creating the trust. The Court can make an order appointing a new trustee under this section where a trustee is incapable of acting through age or infirmity : *Re Lehmann*, 22 Ch. D. 633 ; *Re Barber*, 39 Ch. D. 187 ; *Re Weston*, [1898] W. N. 151 ; in addition to the cases of felony, lunacy and bankruptcy and to the case of the liquidation or dissolution of a corporation specified in the section ; and under ss. 44 and 51 has power on making any such appointment, and also where a trustee has been appointed out of court under any statutory or express power, to make the necessary vesting order, except that, where the appointment has been made out of court in circumstances necessitating the leave of the Judge or Master in Lunacy to make the appointment (see s. 36 (9)), the High Court and the Judge or Master in Lunacy have concurrent jurisdiction in making the vesting order.

Vesting order on appointment by Court.

The Court having jurisdiction to appoint new trustees in the case of a deed of arrangement within the meaning of the Deeds of Arrangement Act, 1914, is the High Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed.

Where an express power of appointment is vested in the continuing trustees, a retiring or refusing trustee is not a continuing trustee within the meaning of the power, and should not be expressed to concur in the appointment (*Re Norris*, 27 Ch. D. 333 ; *Re Coates*, 34 Ch. D. 370), though he would usually be a party to the deed to signify his desire to retire. For the purpose of the statutory power it is provided by s. 36 (8) that a continuing trustee includes a refusing or retiring trustee if willing to act in the execution of the provisions of that section. Under the corresponding provision of the Act of 1893 it has been held that a retiring trustee is not included as a person in whom the statutory power of appointment is vested unless it is shown that he is competent and willing to concur in the appointment, and consequently that an appointment of a new trustee made under the statutory power or an express power to the like effect, in the place of a trustee who is abroad and without his concurrence, is *primâ facie* good : *Re Coates*, 34 Ch. D. 370. *A fortiori* where the trustee whose place is to be filled is a lunatic or absconding bankrupt. In such cases probably the trustee in whose place a new trustee is appointed is not strictly a refusing or retiring trustee; but in all cases where a new appointment under the statutory power is occasioned by a trustee desiring to be discharged or refusing to act, the trustee so retiring should either be expressed to concur in the appointment or a recital of his unwillingness to concur should be inserted in the deed.

Appointment by retiring or refusing trustee.

The provision enabling a retiring trustee to appoint is useful on the retirement of a sole trustee or of all the trustees simultaneously, as it enables the appointment to be made without the circuity of two deeds, which would otherwise be necessary.

The power of appointing new trustees given by s. 36 (1) or by any similar previous enactment to the presonal representatives of the last surviving or continuing trustee (which extends to the personal representatives of a

sole trustee: *Re Shafto*, 29 Ch. D. 247) is exercisable (sub-s. 4) by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

By representatives of deceased trustee.

The representatives of a deceased trustee are of course not bound to exercise such a power, and may reasonably refuse to assume the responsibility of so doing, and will not be chargeable with the costs occasioned by their refusal: *Re Knight*, 26 Ch. D. 82. If they do make the appointment, it is desirable to get the principal beneficiaries to join in the deed to testify their approval .The representatives remain the persons in whom the statutory power of appointing new trustees is vested, notwithstanding any attempt on the part of the trustee by his will to appoint new trustees: *Re Parker*, [1894] 1 Ch. 707. Executors can exercise the power before probate, and even though intending to renounce, at any time before renouncing probate (sub-s. 5) without thereby accepting the office of executor.

Donee of power of appointing or consenting of unsound mind.

Where the donee of the power of appointment or consenting to the appointment is a lunatic, whether so found or not, the power may be exercised by the committee or quasi-committee as the case may be, under the authority of an order of the Judge or Master (Lunacy Act, 1891, s. 27 (1)) in Lunacy made pursuant to s. 128 of the Lunacy Act, 1890; and the order authorising the appointment or consent to the appointment, whether made by the Judge or the Master, may, under s. 129 of the Act of 1890, be extended so as to vest the trust property in the new trustees: *Re Shortridge*, [1895] 1 Ch. 278; *Re Fuller*, [1900] 2 Ch. 551.

Power not affected by alienation of interest.

Where the power of appointing or consenting to the appointment of new trustees is vested in the tenant for life or other beneficiary, it is not affected by the alienation (whether partial or total) of his interest, and is exercisable without the consent of the alienee: *Hardaker* v. *Moorhouse*, 26 Ch. D. 417.

Effect of action for administration.

The pendency of an action for administration of the trusts by the Court does not displace the power, but after a decree or order for administration has been made it can only be exercised subject to the approval of the Court (*Re Gadd*, 23 Ch. D. 134; *Thomas* v. *Williams*, 24 Ch. D. 558; *Re Norris*, 27 Ch. D. 333; *Re Sales*, [1911] W. N. 194; but as to the effect of an order for partial administration, see *Re Cotter*, [1915] 1 Ch. 307); except in the case of an old suit or action, which, though technically alive, is practically at an end. Where there is no action, the exercise of the power cannot be interfered with by the Court under the powers of the T. Act, 1925, or otherwise: see *Re Higginbottom*, [1892] 3 Ch, 132.

Who should be appointed.

Under the ordinary express or the statutory power there is of course no invalidity in the appointment of one of the beneficiaries, or a female, or a person living abroad, although such an appointment would not in general be made by the Court, but it has under very exceptional circumstances appointed both persons resident out of the jurisdiction: *Re Freeman*, 37 Ch. D. 148; and a beneficiary who was also a donee of the power: *Tempest* v. *Lord Camoys*, 58 L. T. 221. The donee of a special power of appointing new trustees may appoint himself where the language of the power admits of such apoointment (*Montefiore* v. *Guedalla*, [1903] 2 Ch. 723); and the statutory power is expressly made exerciseable, subject of course to the terms of the instrument creating the trust, in favour of the person or persons exercising the power; overruling *Re Sampson*, [1906] 1 Ch. 435. As to the appointment of the solicitor of the donee of the power, see *Re*

Cotter, [1915] 1 Ch. 307. The appointment of the husband of a tenant for life entitled for her separate use without power of anticipation as co-trustee is valid though undesirable: *Re Coode*, 108 L. T. 94. Since the 9th August, 1899 (when the Bodies Corporate (Joint Tenancy) Act, 1899, came into operation), a corporation may be appointed a trustee jointly with an individual under a power to appoint "a new trustee or trustees," *Re Thompson*, [1905] 1 Ch. 229, or under the statutory power; and probably under an express power to appoint "a person or persons": see *Willmott* v. *London Road Car Co.*, [1910] 2 Ch. 525; L. P. Act, 1925, s. 61. Corporation.

Subject to any direction to the contrary contained in the instrument creating the trust, and to the provision of the P. T. Act, 1906, s. 2 (4, 5), the Public Trustee may now be appointed under section 5 of the Act, by that name or any other sufficient description, as a new or additional trustee of any trust of a class which under the P. T. Rules, 1912 (see [1912] W. N., pt. 2, p. 173), he is authorised to accept, whether created before or after the passing of the Act, in the same cases and in the same manner, and by the same persons or court, as if he were a private trustee, and may be appointed a sole trustee in cases where a private trustee could not be so appointed: see *infra*. The Public Trustee cannot accept the trusteeship of any settlement other than an English one: *Re Hewitt*, [1915] 1 Ch. 228. Notice of any such proposed appointment must where practicable be given in accordance with s. 5 (4) of the Act of 1906 to all persons beneficially interested who are resident in the United Kingdom and whose addresses are known to the persons proposing to make the appointment, or, if such beneficiaries are infants, to their guardians: but failure to give any such notice will not invalidate the appointment. The Court may on the application of any person to whom notice has been given, make an order under this subsection prohibiting the appointment of the Public Trustee if it considers it expedient to do so: see *Re Hope-Johnstone*, 53 Sol. J. 321; but in determining whether or not such an order is expedient, the mere fact that the proposed appointment must necessarily involve some expenditure will not alone be regarded as material: *Re Firth* [1912] 1 Ch. 806. In *Re Kensit*, [1908] W. N. 235, the Court on the application of beneficiaries and of one of two trustees in whom the power of appointing new trustees was jointly vested, made an order appointing the Public Trustee in the place of the other trustee who desired to retire from the trust, against the wishes of the latter. The Public Trustee.

The consent by the Public Trustee in writing under his official seal is a condition precedent to a valid appointment under the Act otherwise than by will: see P. T. Rules, 1912, rr. 8–10; *Re Shaw*, 58 Sol. J. 414. As to the fees chargeable by the Public Trustee, see P. T. Act, 1906, s. 9; P. T. (Fees) Order, 1912; [1912] W. N., pt. 2, p. 187. Consent of Public Trustee.

In the case of settlements and dispositions on trust for sale of land the number of trustees must not as a general rule be increased beyond four (T. Act, 1925, s. 34); and, except where the trustee is a trust corporation (which expression includes the Public Trustee but for the purpose of determining the number of trustees does not include a custodian trustee) must not be reduced below two: T. Act, 1925, ss. 37 (1) (*c*), 68 (18); and see P. T. Act, 1906, s. 4 (2) (*g*). Increase or reduction in number of trustees.

An increase in the number of trustees may be effected either by the appointment of an additional trustee under s. 36 (6), or of new trustees to fill a vacancy under ss. 36 (1) and 37. The power of appointing an additional trustee under the former sub-section applies wherever a sole

trustee other than a trust corporation is or has been originally appointed to act in a trust or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted, and whether appointed by the Court or otherwise. The power is vested in the person or persons, if any, nominated for the purpose of appointing new trustees by the trust instrument, if able and willing to act, or, otherwise in the trustee or trustees for the time being; but is not exercisable so as by virtue of the appointment to increase the number of trustees beyond four. Any increase in the number of trustees beyond four must be effected, if at all, on the occasion of an appointment to fill a vacancy.

A reduction in the number of trustees may usually be effected either on the occasion of an appointment to fill a vacancy (whether under the statutory or ordinary express power), or by the retirement of a trustee without a fresh appointment (under s. 39 of the Act of 1925). The power of retiring from the trust given by the last mentioned section cannot be exercised so as to reduce the number of trustees to less than two unless the continuing trustee is a trust corporation; and except where only one trustee was originally appointed and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee will not under a new appointment under the statutory power, be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust: s. 37 (1) (*c*).

Discharge of trustee.

The discharge on retirement without the appointment of a new trustee must be effected by deed containing a declaration by the retiring trustee of his desire to be discharged; and consent to such discharge and to the vesting in the co-trustees alone of the trust property must unless the continuing trustee is a trust corporation (see P. T. Act, 1906, s. 5 (2); Interpretation Act, 1889, s. 38) be given by deed by the co-trustees and the person if any empowered to appoint trustees.

The donee of a power of appointment may appoint the Public Trustee to be sole trustee although the intrument creating the trust expressly provides that the number of trustees shall not be reduced below a certain number: *Re Leslie*, [1911] 1 Ch. 611; *Re Moxon*, [1916] 2 Ch. 595.

The Court has power to discharge one of several trustees without appointing a new trustee in an action to administer the trust, but *not* upon an application for that purpose made under s. 41 of the T. Act, 1925: see *Re Chetwynd*, [1902] 1 Ch. 692, decided under the corresponding section of the Act of 1893. Although orders to the contrary have been made in some cases, the more recent practice of the Court has been not to remove a lunatic, bankrupt, or absconding trustee by appointing the other trustees to be trustees to his exclusion; the more proper course being to keep up the number by appointing a new trustee in his place: *Re Aston*, 23 Ch. D. 217; *Re Lamb*, 28 Ch. D. 77; *Re Gardiner*, 33 Ch. D. 590; *secus*, where the whole fund is immediately distributable: *Re Martyn*, 26 Ch. D. 745; or where the trusts are being administered by the Court and the funds when received by the trustees are to be paid into Court: *Davies* v. *Hodgson*, 32 Ch. D. 225. Where one of four trustees was found lunatic by inquisition, a vesting order was made under ss. 135, 136, of the Lunacy Act, 1890, without appointing a new one: *Re Leon*, [1892] 1 Ch. 348; and a similar order was made where a bankrupt trustee had absconded: *Re Lees*, [1896] 2 Ch. 508; *Re Fitzherbert*, [1898] W. N. 58.

Appoint-

By the T. Act, 1925, s. 37 (1) (*b*) (which applies to trusts previously

created), it is provided that on an appointment of new trustees the trusts may be severed by the appointment of separate trustees for any part of the trust property held on distinct trusts; and this applies although in a certain event the trusts may coalesce: *Re Hetherington*, 34 Ch. D. 211.

ment of separate trustees for part of the trust property held on distinct trusts.

The powers and provisions of the T. Act, 1925, with reference to the appointment of new trustees and the discharge and retirement of trustees apply to and include trustees for the purposes of the S. L. Act, 1925, and for the purpose of the management of land during a minority, whether such trustees are appointed by the Court or by the settlement, or under provisions contained in any instrument. T. Act, 1925, s. 64. Sub-s. 2 of this section sets at rest a doubt which previously existed as to the persons entitled to appoint where the settlement having contained no appointment of trustees for the purposes of the Act, such trustees have been subsequently appointed by the Court. In such cases power to appoint new or additional trustees of the settlement for the purposes of the S. L. Acts is expressly vested in the person or persons (if any) nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, if able and willing to act, "though no trustees for the purposes of the said Acts were thereby appointed," or otherwise, in the surviving or continuing trustees or trustee for the time being for the purposes of those Acts or the personal representatives of the last surviving or continuing trustee for those purposes.

Trustees for the purposes of the S. L. Act.

Section 35 of the T. Act, 1925, requires a memorandum of the names and addresses of the persons who are for the time being the trustees of a settlement to be endorsed, on the occasion of every new appointment, upon the last or only principal vesting instrument.

By s. 40 of the T. Act, 1925, which applies to deeds of appointment or discharge executed on or after January 1, 1882, the appointor is empowered by a declaration to be contained in the deed of appointment to vest any estate or interest in any property to which the section extends and which is subject to the trust in the continuing and new trustees without any conveyance or assignment; and the like declaration may be made (sub-s. 2) by the retiring and continuing trustees and the person empowered to appoint new trustees, where a trustee is discharged from the trust under s. 39. Any such declaration will not be invalidated by the fact that the estate interest or right to be vested is not expressly referred to, but subject to any express provision to the contrary contained in the deed of appointment or discharge, will operate to vest such estates, interests and rights as are capable of being and ought to be vested thereby; and a deed of appointment or discharge made after December 31, 1924, but containing no such declaration, will, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration extending to all the estates, interests, and rights with respect to which a declaration could have been made.

Vesting declaration, T. Act, s. 40.

Section 40 applies to any estate or interest in "land" (as that word is defined in section 68), or "in any chattel," and "the right to recover and receive any debt or other thing in action"; but by sub-s. 4 does not extend to (a) land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock; or (b) land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or

Vesting declaration, how far applicable.

consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture; or (c) shares, stock, &c., transferable only in books kept by a company or other body, or in manner directed by or under Act of Parliament; and property in any of these forms must be conveyed in the appropriate manner.

What may be included in a vesting declaration.

It follows that the estates interests and rights which are capable of being and ought to be vested by declaration in the continuing and new trustees or, as the case may be, in the continuing trustees alone, and which, if the deed contains no express declaration, will become vested in those persons by implication include all freehold estates and interests in land, including incorporeal hereditaments, all interests in chattels personal, such as furniture and heirlooms; the right to recover and receive all debts, including debts secured by mortgage, and choses in action, including moneys receivable under policies of insurance.

Purely equitable interests, such as a reversionary interest in personalty or a share of a residuary estate would pass of course to the new trustees by virtue of their appointment quite apart from any statutory provision to that effect.

The interests not capable of being vested by declaration are certain leasehold interests in land excepted from the operation of the section by sub-s. (4), clauses (a) and (b) set out *supra* and the shares and stocks excepted by clause (c) of the same subsection.

Land conveyed by way of mortgage.

Although the expression "convey" and "conveyance" are not in terms defined so as to include "lease" or "demise" (see s. 68 and cf. s. 205 of the L. P. Act, 1925, where "conveyances" includes "lease"), it is apprehended that the exception of land conveyed by way of mortgage for securing money subject to the trust must be intended to exclude from the operation of a vesting declaration all interests in land acquired by legal mortgage by demise or by charge by way of legal mortgage taking effect under s. 87 of the L. P. Act, 1925, with the exception of course of the like interests in land vested in trustees for securing debentures or debenture stock. Upon any change of trustees, therefore, the legal interest in mortgage terms must be transferred in the appropriate manner (see L. P. Act, s. 114, and Vol. 2, p. 243).

Leasehold interests in land.

Leasehold interests in land not vested in the trustees by way of mortgage and assignable without consent, or, in the case of a lease not assignable without consent, if the requisite consent has been obtained previously to the appointment. may be vested by declaration and will pass to the new or continuing trustees on appointment without the necessity of a separate assignment.

Shares, stocks, and bebentures, &c., of companies and public bodies must be transferred in the usual way. Securities "to bearer" must of course be transferred by actual delivery, and should be deposited in a bank or otherwise so as to be under the joint legal control of all the trustees.

Vesting declaration must be contained in same deed.

The means of vesting the trust estate by declaration which was first afforded by the C. Act, 1881, has proved especially valuable in cases where the outgoing trustee is under some incapacity or absent or where the concurrence of the representatives of a last surviving trustee cannot be obtained. An express declaration to be effective must be contained in the same deed by which the new trustee is appointed, or the retiring trustee is discharged, and any provision intended to prevent the deed of appointment or discharge from operating as if it had contained such a declaration

must also be contained in the same deed. The declaration whether express or implied by virtue of the Act is to vest the estate right or interest to which it relates in " the persons who by virtue of the deed of appointment or discharge become or are the trustees for performing the trust."

Implied statutory declaration to prevent outstanding legal estates.

The implied statutory declaration was the creature of the Act of 1925, and conforms with the Law of Property Act of the same date in eliminating as far as possible the risk, with the resulting inconvenience, of the legal estate in land being left outstanding by inadvertence. Any estate outstanding at the commencement of the Act in a former trustee of land held on trust for sale would apparently have passed automatically under the transitional provisions of the L. P. Act, 1925, to the then trustees ; and the question whether a vesting declaration could have effect to get in a legal estate left outstanding on a former appointment can no longer arise.

As already observed, property to which the express or implied statutory declaration does not apply must be conveyed on the appointment of new trustees or the retirement of a trustee to the new or continuing trustees in the appropriate manner.

Conveyance by continuing trustee to himself and others.

Land may be conveyed by a continuing trustee to himself and others or by several trustees to some only of themselves (L. P. Act, 1925, s. 72), and in either case the usual express or implied statutory covenants may be given (see L. P. Act, 1925, s. 82) in the same manner in all respects as if none of the conveying parties was also a grantee ; and where a trustee has been appointed out of Court under any statutory or express power the High Court has jurisdiction either alone (T. Act, 1925, ss. 44, 51) or, if any outgoing trustee was lunatic or defective and beneficially interested in the property, then concurrently with the Judge or Master in Lunacy, to make a vesting order in respect of any property to which the express or implied statutory vesting declaration does not extend.

Vesting order in respect of property to which declaration does not extend.

Trustees for religious purposes.

As to the appointment of new trustees of land held in trust for religious or educational purposes, see the Trustees Appointment Acts, 1850 to 1890, namely, 13 & 14 Vict. c. 28 (Peto's Act), 32 & 33 Vict. c. 26, and 53 & 54 Vict. c. 19, by s. 3 of which the power of appointment contained in any Statute for the time being in force is made applicable. As to the appointment of new trustees for literary and scientific institutions, see 17 & 18 Vict. c. 112.

Vesting orders of charity property.

As to vesting orders of charity property see T. Act, 1925, s. 52.

Public Trustee.

The Public Trustee cannot accept a trust exclusively for religious or charitable purposes : see Public Trustee Act, 1906, s. 2 (5) ; *Re Hampton*, 88 L. J. Ch. 103. This prohibition is personal to the Public Trustee, and does not apply to corporations appointed custodian trustees under s. 4 (3) of the Act : *Re Cherry*, [1914] 1 Ch. 83, and see *post*, p. 158.

Friendly societies.

The appointment of trustees of friendly societies is now regulated by the Friendly Societies Act, 1896, s. 25 ; and dealings with their property and investments of their funds by ss. 44—53, as amended by the Friendly Societies Act, 1908, s. 4.

Building societies.

Under a power contained in the Building Societies Act, 1874, s. 25, the members or directors of a building society, according as the rules of the society direct, can appoint or remove trustees for the purpose of the investment of the society's surplus funds in the securities specified in that section or in the Building Societies Act, 1894, s. 17. Such trustees are only required in the case of unincorporated societies.

Registered land.

The provisions of the T. Act, 1925, relating to the appointment and discharge of trustees and the vesting of trust property apply to registered

land. The appointment will be in the same form as if the land were not registered, but the proper entry must be made in the register (see L. R. Act, 1925, s. 47).

As to the appointment of new trustees on summons, see R. S. C., Order 55, rule 13A.

Duties of retiring and incoming trustees.

As to the responsibility of a trustee who retires with the knowledge that his retirement is likely to be followed by a breach of trust, see Lewin, 12th ed., 830, and cases there referred to, *Head* v. *Gould*, [1898] 2 Ch. 250. As to the duty of an incoming trustee to see that the trust estate is in a proper state of investment, see Lewin, 12th ed., 231; and as to his freedom from responsibility in respect of incumbrances affecting the trust estate which are not disclosed to him, though known to the retiring trustee, see *Hallows* v. *Lloyd*, 39 Ch. D. 686; and as to his liability where he pays the wrong person without calling on him to prove his title, see *Davis* v. *Hutchings*, [1907] 1 Ch. 356; but see *Re Allsop*, [1914] 1 Ch. 1, where some of the observations contained in the judgment in the last cited case were disapproved; and see *Re Claridge's, &c., Co.*, [1921] 1 Ch. 543.

Stamps.

As to the stamp on appointments of new trustees, see the Stamp Act, 1891, s. 62, and the First Sched. tit. APPOINTMENT: *Hadgett* v. *I. R. Commrs.*, 3 Ex. D. 46; 4 Dav. Prec., 3rd ed., 609; *Massereene* v. *I. R. Commrs.*, [1900] 2 Ir. R. 138; see also Fin. Act, 1902, s. 9, and the Fin. (1909–10) Act, 1910, s. 74 (6).

Costs of appointment.

As to the costs of the appointment, see *Harvey* v. *Olliver*, [1887] W. N. 149; 31 Sol. J. 640; Lewin, 12th ed., 831.

Judicial trustee.

Under the Judicial Trustee Act, 1896, the Court may, on the application of any person creating or intending to create a trust or by or on behalf of any trustee or beneficiary, appoint a person (including a bank: *Re Cohen*, 62 Sol. J. 682) either jointly or as sole trustee, and if sufficient cause is shown, in the place of all or any existing trustees, but the appointment is a matter entirely within the discretion of the Court: *Re Ratcliff*, [1898] 2 Ch. 352: *Douglas* v. *Bolam*, [1900] 2 Ch. 749. The administration of the property of a deceased person, whether a testator or intestate, is a trust, and an executor or administrator a trustee within the meaning of this Act; see s. 1, and *Re Ratcliff*, *sup.*

The Public Trustee may be appointed to be a judicial trustee: see P. T. Act, 1906, ss. 2 (1) d and 6 (2).

As to the retirement of a judicial trustee, see Judicial Trustee Rules, 1897, 1899, 1910, rr. 23, 24: *Re Johnston*, 105 L. T. 701.

Custodian trustee.

As to custodian trustees, see *post*, p. 159, note.

CLAUSES.

Appointment (*a*) of trustee where the power is contained in the settlement or will, with variations.

1. In exercise of the power for this ppose by the recited indre of the —— day of ——, *or*, " by the within written indre " (*aa*), *or*, " ppal indre," *or*, " by the recited will of the sd X.," given to the sd, *donee or donees of power*, & of every or any other power enablg him [them] in this behalf he the sd, *donee*, [they the sd, *donees*,] hby (*b*) appts [appt] the sd, *new tree or trees*, to be a tree [trees] in the place of the sd, *deced or outgoing tree or trees*, for the pposes of the sd indre (*aa*) of the —— day of ——, *or*, " the within written indre," *or* the " ppal indre " *or* " the sd will [& codls] of the sd X.," or such of the same pposes as are still subsistg & capable of takg effect (*bb*).

Appointment of trustee under statutory power (*c*).

2. In exercise of the power for this ppose by the statute in that behalf *or, if the statutory power is expressly incorporated with or witht variation in the instrumt creatg the trust,* " by the jt operon of the *settlemt or will*, & " the statute in that behalf " given to the sd, *donee or donees of power*, & of every, &c., *as in last form.*

Appointment where more than one set of trustees.

3. In exercise, &c., *as above forms* **1** *or* **2**, he the sd, *donee*, [they the sd, *donees*] hby appts [appt] the sd, *new tree or trees*, to be a tree [trees] in the place of the sd, *deced or outgoing tree or trees*, for all the pposes for wch the sd, *deced or outgoing tree or trees*, was [were] appted a tree [trees] by the sd, *settlemt or will, or as the case may be*, or such, &c., *as in form* **1**.

Stamp.

(*a*) The appointment requires two 10*s*. stamps, one in respect of the appointment and another in respect of the vesting of the trust property (see Stamp Act, 1891, s. 62 ; *Hadgett* v. *I. R. Commrs.*, 3 Ex. D. 46.

(*aa*) The description of the instrument creating the trust should accord with the description adopted in the instrument itself. This, according to the date of execution and the nature of the transaction effected may be " indenture," " deed," " deed of settlement," " settlement," or, in the case of a conveyance of land on trust for sale, " deed of conveyance " or " conveyance." (See L. P. Act, 1925, s. 57).

(*b*) If the consent of any person is required to the appointment, add here " with the consent (hby testified) of the sd *consentg pty or pties.*"

(*bb*) As to the meaning of the expression, " capable of taking effect," see *Re Finch & Chew*, [1903] 2 Ch. 486.

(*c*) See *ante*, p. 119.

Vesting declaration (*d*).

4. The sd A. & B., *apptors,* hby declare that all & singr the real & personal ppty including the rt to recover any debt or other chose in action (except mortgage debts secured by way of legal mortgage upon land) wch is [the ppty specified in the [first (*e*)] schdle hto wch is] now subjt to the trusts of the recited settlemt of, &c., *or* " the sd will & codls of the sd X.," & is capable of being vested by this declon (*f*), shl vest in the ad, *continug & new trees,* as jt tenants for all such este and intt as the sd, *continug, or continug and outgoing trees,* or any of them had thrin resply immedly before the exon of these psnts for the pposes & upon the trusts & subjt to the powers & provons applicable thto resply by virtue of the sd settlemt, *or,* " will & codls," or orwise.

Clause limiting operation of implied statutory vesting declaration.

5. This deed shall not operate to vest in the sd *continug & new trees,* the right to recover or receive the mtge debts specified in the second schedule hereto (*e*) which mtge debts, it is intended, shall be separately transferred to them along with the securities for the same.

6. Section 40 of the Trustee Act, 1925, shall not apply to this deed.

Clause excluding implied statutory declaration.

7. The sd, *tenant-for-life,* hby covts with the sd *solor-tree* that he, the sd, *solor-tree,* shl be entled to make & receive, & that the sd, *tenant-for-life,* will pay or procure to be pd to the sd *solor-tree* or his firm all such charges & emolumts for business done by him or his firm in relation to the exon of

Power for solicitor-trustee to charge.

(*d*) See *ante,* pp. 125 *et seq.* The usual practice will no doubt be to omit the express vesting declaration in reliance on the implied statutory vesting declaration except in those cases where it is desired to except from the operation of the deed some interest which, though capable of being vested by deduction, is intended to be separately transferred, *e.g.* a mortgage debt which, if secured by way of legal mortgage on land, should, if possible, be transferred with the mortgaged property which is incapable of being vested by declaration (see T. Act, 1925, s. 40 (4); *Webb* v. *Crosse,* [1912] 1 Ch. 323). Alternatively the operation of the implied statutory vesting declaration may be expressly limited as in form 5 in the text.

(*e*) It is often convenient to specify the trust property in two schedules —one containing the property which is intended to pass by the vesting declaration and the other that which is not.

(*f*) Section 40 sub-s. 4 (b) of the T. Act, 1925, renders it unnecessary expressly to except from the vesting declaration, whether express or implied by the statute, leaseholds forfeitable on assignment or assignment without licence, if any such be included among the property subject to the trust.

the trusts of the ppal indre, as he or his firm wd have been entled to make & receive in respt throf, if he had not been a tree (*b*).

PRECEDENTS.

I.

APPOINTMENT *by* SUPPLEMENTAL DEED (*c*) *by the surviving* TENANT *for* LIFE *of a* SETTLEMENT *of* MONEY *in the* FUNDS, *of* NEW TRUSTEES *in the place of* DECEASED *or* RETIRING TRUSTEES, *the* CHANGES *of* INVESTMENT *and other dealings with the* TRUST FUNDS *not being fully recited* (*d*).

THIS DEED OF APPOINTMENT, made, &c., BETN A., of, &c., widow, 1 ; C., *retirg tree*, 2 ; D., *continug tree*, 3 ; E. & F., *new trees*, 4. WHAS this deed is suppl to an indre (hrinar called the ppal indre (*e*)) dated, &c., & made, &c., & being a settlemt made in conson of the marre shortly aftwds solemnised betn B. & the sd A. (then X. spinster) : AND WHAS the sd B. died on the —— day of —— : AND WHAS divers changes in the investmt of & other dealgs with the trust funds comprd in or subjt to the trusts of the ppal indre have from time to time taken place, & portions throf have been applied or disposed of for the advcemt of chln of the sd marre, & orwise, psuant to the trusts & powers of the sd indre, & the trust funds now remaing subjt to the subsistg trusts throf consist of the sum of £—— 2½ p.c. Consold Stk, &

Recitals.

Settlement.

Death of husband.

Present state of trust-funds.

(*b*) As to the right of a solicitor-trustee to charge, see Vol. 2, "SETTLEMENTS (PERSONAL)." Of course this is a mere personal covenant of the covenantor and does not affect the other *cestuis que trust*.

(*c*) It used to be the practice to make appointments of new trustees by endorsement on the settlement ; it is now more common to do so by supplemental deed.

(*d*) It is desirable that the deed should be executed by the new trustee to signify his acceptance of the office. As to the consent of a new trustee to act where the appointment is made by the Court, see R. S. C., Order 38, r. 19A. The new trustee should be not only a person of integrity but of good credit as to pecuniary means, see *Re Castle Sterry*, [1888] W. N. 179 ; *Re Smith*, [1894] W. N. 68.

(*e*) As to the proper mode of describing the instrument which created the trust, see *ante*, p. 129, note (*aa*).

Death of trustee. Desire to retire. Desire to appoint. Funds to be transferred. Appointment.

£—— Debenture Stk of the —— Rly Co. (*e*): AND WHAS the sd L., *deced tree,* died on the —— day of ——: AND WHAS the sd C. is desirous of being discharged from the trusts of the ppal indre: AND WHAS the sd A. is desirous of apptg the sd E. & F. to be trees of the ppal indre in the place of the sd L. & C.: AND WHAS the sd respective sums of stk are intd to be forthwith transferred by the sd C. & D. into the jt names of the sd D., E., & F. (*a*). NOW THIS DEED WITNESSETH that in exercise, &c., *Apptmt by A. of E. & F. as new trees in place of L. & C.*, p. 129. IN WITNESS, &c. (*b*).

(*e*) It is convenient for the purpose of showing what is property which is liable to duty on the death of either spouse to distinguish the funds in which the spouses respectively took the first life interest. This may be done as follows: "WHAS the dealings with the ppty in the ppal indre called the husbd's fortune are stated in the first schdle hto & the dealings with the ppty in the ppal indre called the wife's fortune [togr with certn ppty added thto by the provons in the ppal indre relatg to the after-acquired ppty of the said A.] are specified in the second schdle hto, & it thby appears that the husbd's fortune is now represented by £—— & that the wife's fortune togr with the ppty added thto as afsd is now represented by £——." If it is impossible to set out the accounts say "the sum of £—— 2½ p.c. Consold Stk representg the ppty in wch the sd B. took the first life intt under the ppal indre, & the sum of £—— like Stk & £—— Debenture Stk of the —— Rly Co, representg the ppty in wch [togr with certn, &c., *as above*] the sd A. takes the first life intt under the ppal indre."

(*a*) The transfer of the funds ought not in strict propriety to be made till after the appointment, but is sometimes made before.

Special formalities.

(*b*) Where special formalities of execution are prescribed by the power, the deed must be executed according to such formalities, or in the presence of two witnesses in the ordinary manner, see the L. P. Act, 1925, s. 159. Neglect of this may invalidate the appointment.

II.

APPOINTMENT *by the* SURVIVING TRUSTEE *of a* NEW TRUSTEE *in the place of a* DECEASED TRUSTEE *of a* MARRIAGE SETTLEMENT *of* PERSONALTY, *comprising a* SUM *covenanted to be paid by the* HUSBAND'S FATHER, *a* POLICY *on the* HUSBAND'S LIFE, *a* SUM OF CONSOLS *belonging to the* WIFE, *her* REVERSIONARY INTEREST *under her* PARENT'S MARRIAGE SETTLEMENT, *and* PROPERTY *becoming settled by virtue of a covenant; the changes of investment being stated concisely in a schedule.* Variation *in notes for the case of* appointment *by* executors *of* last surviving trustee (*c*).

Recitals.

PARTIES, K., *surviving tree*, 1; A. & B., *husband & wife* (*d*), 2; L., *new tree*, 3. WHAS this deed is suppl to an indre (hrinar called the ppal indre (*e*)), dated, &c., being a settlemt exted in contemplon of the marre shortly afterwds solemnised betn the sd A. & B., whby the sd K. & X. were appted trees throf & certain trusts were declared of a poly of assurnce on the life of the sd A. and of the moys assured thby & of a sum of £——, payable to the sd K. & X. at the expiron of six calr months after the death of C., the father of the sd A., & of the sum of £—— £3 per cent. Consolidated Bk Annies, & of the one eql —— share to wch the sd B. became entled on her marre, subjt to certain prior intts durg the lives & life of E. & F., the parents of the sd B., & the survor of them, of & in the ppty comprd in an indre dated, &c. (being the marre settlemt of the sd E. & F.), by virtue of such indre & a deed poll under the hands of the sd E. & F., dated, &c.: AND

(*c*) The executors of a last surviving trustee have power to appoint new trustees of the settlement either before probate, if all intend to renounce, or after probate; and in the former case without thereby accepting the office of executor (see *ante*, p. 122). In either case where, as is supposed in the text, two trustees were originally appointed, two new trustees at least must be appointed by the executors (see T. Act, 1925, s. 37 (1) (c)). The executors will be substituted for the surviving trustee as parties of the first part, and the recitals will be varied as in note (*f*), *infra*.

(*d*) Although if no express power of appointing new trustees is contained in the settlement requiring the consent of the husband and wife their consent is not necessary, it is usual to make them consenting parties.

(*e*) As to the proper mode of describing the instrument which created the trust, see *ante*, p. 129, note (*aa*).

WHAS in the year —— the sd B. became entled to a legacy of £—— under the will of Z., dated, &c., & proved, &c., by P. & Q., the exs thrin named, & the sum of £——, being the amt of the sd legacy after payg thereout the sum of £—— for legacy duty, was by the direction of the sd B. pd by the sd P. & Q. to the sd K. & X. as trees of the ppal indre on the —— day of ——, psuant to the provons of a covt thrin contd relatg to the after-acquired ppty of the sd B. (*e*): AND WHAS the schdle hto contains an epitome of the dealings with the sd sum of Bank Annies & with the sd sum of £——: AND WHAS the sd X. died on the —— day of ——: (*f*) AND WHAS the sd K. is desirous [with the consent of the sd A. & B.] of appointg the sd L. to be a tree of the ppal indre in the place of the sd X.: AND WHAS it is intd that the ppty stated in the sd schdle to represent the sd sum of Bank Annies & the sd sum of £—— shd be forthwith transferred into the names of the sd K. & L.: NOW THIS DEED WITNESSETH that in exercise, etc., *Apptmt of L. (with the approval of the sd A. & B.) to be a tree of the ppal indre in the place of the sd X.*, p. 129. IN WITNESS, &c.

Appointment.

The Schdle above referred to.

The above mentd sum of £3 p.c. Consolidated Bk Annies were sold in the yr ——, & the proceeds after paymt of costs amtg to £—— were invested on mtge of land belongg to Q.

Distinction between legacy given to wife or to trustees.

(*e*) In the case in the text the legacy became subject to the trusts of the settlement by virtue of the covenant to settle B.'s after-acquired property; but where a legacy is given to the trustees of a will on trusts declared by reference to a settlement, the legacy being settled by the will and not by the settlement, remains vested in the trustees for the time being of the will upon the trusts therein (though by reference) declared. If, however, the legacy is given to the trustees of the settlement on trusts declared by the settlement, it becomes incorporated with and forms part of the settlement funds, and in this case new trustees appointed for the settlement become *ipso facto* trustees of the legacy.

(*f*) See note (*c*), *supra*. If the appointment is made by the executors of the last surviving trustee continue as follows:—*Recite Will of K. appointing executors; Death of K. & probate, or death of K. and intention of executors to renounce probate.* "And whas the *exors* have [notwithstanding their intention to renounce probate as afsd] been requested by the sd A. & B. to appoint the sd L. & —— to be trees of the ppal indre in the place of the sd K. & X."

In the yr —— the above mentd sum of £—— was invested in the pchase of £—— G. W. Debenture Stock.

In the yr —— the sd mtge was pd off & the mtge moys were invested in the pchase of £—— G. N. Ordinary Stock (*a*).

III.

APPOINTMENT *by* INDEPENDENT DEED *of* NEW TRUSTEES *of a* SETTLEMENT *in lieu of* RETIRING *and* DECEASED TRUSTEES (*b*), *where the* HUSBAND *and* WIFE *are dead, and the* TRUST FUNDS *have been partly* DISTRIBUTED, *and the remaining part consists of* MONEY *invested on* MORTGAGE *which is transferred by a* SEPARATE DEED (*c*), *the various* DEALINGS *with the* FUNDS, *and two prior* DEEDS *endorsed on the* SETTLEMENT, *being shortly recited.*

Recitals. Marriage settlement.

PARTIES, L., *continug tree*, 1; K., *retirg tree*, 2; N. & Q., *new trees*, 3. WHAS by an indre, dated, &c., & made betn A., *husbd*, of the first pt, C. *wife*, then & thrin descd as B., spinster, of the second pt, & E., G., & K., of the third pt (being the settlemt made on the marre then intd, & shortly aftwds solemnised of the sd A. & C.), a sum of £——, &c., Annies thrin stated to have been transferred into the names of the sd E., G., & K., was settled upon the trusts thrin mentd, being trusts for the sd C. & A. successively for life, with remr to the chln of the sd marre as the sd A. & C., or the survor of them shd appt, & in default of such apptmt for all such of the sd chln who being male shd attain the age of twenty-one yrs, or being female shd attn that age or marry, in eql shares as thrin mentd: AND the indre now in recital contd the usual hotchpot clause & power for the advcemt of the chln of the marre after the death of the sd A. & C., or durg the lifetime of them or the

(*a*) Notice of this deed must be given to the trustees of the reversionary interest, to the Insurance Office, and to the covenantor for payment of the annuity.

(*b*) See *ante*, p. 121.

(*c*) See *ante*, p. 126, and p. 130, note (*d*). As it isunnecessary to keep the trusts affecting the mortgage money off the title (L. P. Act, 1925, s. 113) the transfer will be in the ordinary form, see Vol. 2, p. 243. The continuing and retiring trustees may convey to (L. P. Act, 1925, s. 72) and covenant with (L. P. Act, 1925, s. 82) the continuing and new trustees.

survor of them with their, his, or her consent in writg : And it was thby decld, &c., *power to appt new trees on death or resignon vested in the husbd & wife, or the survor, & aftwds in the survivg or continug (includg retirg) trees, to be set out fully as far as material :* And whas on the —— day of —— the sum of £——, pt of the sd sum of £—— Annies was (with the consent of the sd A. & C., testified by a deed poll under their respective hands & seals dated, &c., & endorsed on the sd settlemt) sold by the sd trees (leavg the sum of £—— like Annies remaing invested in their names), & the net proceeds throf amtg to the sum of £—— were applied by them for the advancemt of D., one of the chln of the sd marre : And whas the sd C. died on the —— day of ——, witht havg concurred with the sd A. in exercisg the jt power of apptmt by the sd settlemt given to them as afsd : [And whas the este duty wch became payable on the death of the sd C. was raised by the sd trees by a sale of £—— Annies, pt of the sd sum of £—— Annies, & pd] : And whas there were issue of the sd marre three chln & no more, viz., the sd D., who attained the age of twenty-one yrs on the —— day of ——, S., now the wife of P., with whom she intermarried on the —— day of ——, & T., who is still an infant : And whas the sd E. died on the —— day of ——, & by an indre (endorsed on the sd settlemt) dated, &c., & made, &c., the sd L. was appted by the sd A. to be a tree of the sd settlemt in the place of the sd E., & the sum of £——, &c., Annies, being the residue of the sd sum of £—— like Annies after the sales of the pts throf hrinbfe recited & of £—— further pt throf for paymt of expses, was thrupon transferred into the names of the sd L., G., & K. : And whas by a deed poll under the hand & seal of the sd A., dated, &c. (& also endorsed on the sd settlemt) the sd A. in exercise of the power in that behalf contd in the sd settlemt, appted the sum of £——, pt of the sd sum of £—— Annies to the sd S., & the sd A. thby also released to her his life intt in such appted sum : And [the balce of] such sum [after payg or providg for the paymt of the succession duty payable in respt throf,] was accdly, with the consent of the sd S., transferred by the sd trees to her husbd the sd P., leavg the sum of £—— like Annies remaing invested in their names upon the trusts afsd : And whas the sd L. G., & K., with the consent of the sd A., sold out the sd last

Part of funds applied for advancement of a son.

Death of wife.

Payment of estate duty.

Family.

Death of one trustee and appointment of new trustee.

Appointment of sum to daughter.

mentd sum on the —— day of ——, & invested the proceeds throf in the pchase in their names of the sum of £—— Bank Stk : AND WHAS the sd A. died on the —— day of ——, witht havg excrcised (save as afsd) the power of apptmt given by the sd settlemt to the survor of them, the sd A. & C. : AND WHAS upon the death of the sd A. the sum of £—— pt of the sd sum of £—— Bank Stk was sold out by the sd L., G., & K., & produced the sum of £——, & the sum of £—— pt throf, makg with the sum so advanced for the benefit of the sd D., as afsd, wch was brought by him into hotchpot, the amt of his share in the trust premes, was pd to him after deductg costs [& duties (*a*) payable in respt throf] & the sum of £——, further pt of the sd sum of £——, makg with the sum so appted to the sd S., & pd to the sd P. her husbd as afsd, wch was brought by them into hotchpot, the amt of the share of the sd S. in the trust premes, was, with her consent, pd to the sd P. after deductg costs, [& duty, & the remr of the sd sum of £——, produced by the sd sale, was applied in paymt of the duty payable in respt of the expectant share of the sd T. in the trust premes] : AND WHAS the sd G. died on the —— day of —— : AND WHAS the sum of £——, the residue of the sd sum of £—— Bank Stk after such sale as afsd, was, on the —— day of ——, sold by the sd L. & K., & the proceeds thof, amtg to £——, were invested by them upon a mtge of certn freehd ppty, situate at, &c. : AND WHAS the sd K. is desirous of being discharged from the trusts of the sd settlemt, & the sd L. & K. are desirous of apptg the sd N. & Q. to be trees throf in the place of the sd G. & K. : AND WHAS the sd sum of £—— & the secs for the same are intd to be transferred by the sd L. & K. to the sd L., N., & Q., by a deed bearg even date with, & to be exted immedly after these psnts, & made betn, &c. : NOW THIS DEED WITNESSETH as follows :

Change of investment.

Death of husband.

Payment of shares to children, except an infant.

Death of another trustee.

Investment of infant's share on a mortgage.

Desire to retire.

Mortgage to be transferred by separate deed.

Appointment of new trustees.

1. *Appointment by L. & K. of N. & Q. to be trees in the place of G. & K.*, p. 129.

2. *Clause excluding operation of implied statutory vesting declaration*, p. 130, f. 5, *saying* " the sd sum of £—— so secured & intended to be transferred as afsd."

IN WITNESS, &c.

(*a*) Succession duty on the sum advanced to D., and on the sum originally appointed to S. will be payable.

IV.

APPOINTMENT (*endorsed*) *by* DEED *or* WRITING *not under* SEAL (*b*) *under a power to* APPOINT *by* DEED *or* WRITING, *or the* STATUTORY POWER, *of a* NEW TRUSTEE *of a* SETTLEMENT *in place of a* DECEASED TRUSTEE, *where all the* TRUST PROPERTY *is transferred by a* SEPARATE INSTRUMENT. SHORT FORM.

Recitals. A DEED OF APPOINTMENT made by C., of, &c., widow, formerly D. within named, *the tenant for life. Recite marre, death of husbd, death of tree, desire to appt:* AND WHAS the trust este subjt to or held upon the trusts of the within written indre now consists of the ppty specified in the schdle hto (the first pt of wch contains parlars of the ppty in wch the sd *husbd* took the first life intt & rhe second pt whrof contains parlars of the ppty in wch the sd *wife* took the first life intt), & wch is intd to be forthwith, or as soon as may be, transferred or assured so as to be vested in the sd, *continuing & new trees*, jtly: NOW THIS DEED WITNESSETH, etc., *Apptmt of new tree in place of deced tree*, p. 129. IN WITNESS, &c.

Present state of trust property.

Appointment.

Schdle.

V.

Parties. APPOINTMENT *of* NEW TRUSTEES *of a* SETTLEMENT *under a* POWER *vested in a* LUNATIC (*a*).

PARTIES, A., "a pson of unsound mind so duly found by inquison actg by B. of ——, the duly appted committee of his este," *in case of lunatic not so found by inquison say* "a pson of unsound mind not so found by inquison actg by B. of ——, the pson appted to exercise the powers of a committee of his este," 1; C., D., & E., *new trees*, 2. *Recite settlemt givg a power to appt new trees to A., & death, &c. of X. & Y., the trees of the settlemt.* AND

(*b*) Although the statutory power, and in the case supposed the express power by virtue of the instrument creating it, is made exercisable by writing, not under seal, it is better that it should be by deed, the stamp being the same. The statutory power is not exercisable by will: *Re Parker*, [1894] 1 Ch. 707; *ante*, p. 122.

(*a*) See *ante*, p. 122.

WHAS by an order dated, &c., & made in the matter of the lunacy of the sd A., it was ordered that the sd B. as such committee [pson] as afsd shd be at liberty in the name & on behalf of the sd A. to exercise the power vested in him as hrinbfe is recited of apptg the sd C., D., & E. to be trees of the sd settlemt in the place of the sd X. & Y., & that for the ppose of vestg any este or intt in the ppty subjt to the trusts of the sd settlemt in the sd C., D., & E., the sd B. as such committee [pson] as afsd shd be further at liberty in his name & on his behalf to exte such deeds & instrumts as he might think necy & pper, to be first settled & approved by the Master in Lunacy; AND WHAS the Master in Lunacy has settled & approved of these psnts as a pper deed to be exted psuant to the sd order, & in testimony of such his approval the seal of the sd Master has been affixed in the margin hrof. NOW THIS DEED WITNESSETH that in psuance of the sd order the sd A., actg by the sd B. [as such committee] as afsd, *continue apptmt of C., D., & E., as new trees,* p. 129. IN WITNESS, &c.

Order in lunacy.

Approval of master.

Witnesseth.

VI.

APPOINTMENT *by* SUPPLEMENTAL DEED *of a* NEW TRUSTEE *of a* DEED *of even date with a* MARRIAGE SETTLEMENT *by which* FREEHOLDS *and* COPYHOLDS *were conveyed and covenanted to be surrendered to trustees in* TRUST *for* SALE (*a*), *part of the* PROPERTY *having been sold.*

PARTIES, F., *survivg tree,* 1; K., *new tree,* 2. Supplemental to an indre (hrinar called the conveyance in trust for sale) dated,

(*a*) See the Precedents of two deeds for effecting a settlement of real or leasehold estate in this manner, Vol. 2, "SETTLEMENTS (PERSONAL)." The person appointed to be a new trustee of the conveyance in trust for sale must be appointed by a separate instrument (see the next Precedent) to be a new trustee also of the settlement of the proceeds of sale; and the two instruments of appointment must be executed concurrently in order to secure that the same persons shall become the trustees of the conveyance in trust for sale as become the trustees of the settlement of the proceeds of sale (T. Act, 1925, s. 35 (1)).

A memorandum of the persons who are for the time being the trustees for sale must be endorsed on or annexed to the conveyance in trust for sale (T. Act, 1925, s. 35 (3)).

Recitals. &c., whereby in conson of the marre shortly aftwds solemnised betn the sd A. & B., the freehd ppty specified in the first & second schdles hto was assured to the use of the sd F. & G. in fee simple upon the trusts thrinar expressed, & the ppty specified in the third schedle hto (being then copyhold of the manor of —— but afterwards enfranchised by the operation of the L. of P. Act, 1922, as amended by the L. of P. (Amendment) Act, 1924) was covted to be surrendered to the use of the sd F. & G. & their heirs upon the trusts thrinar expressed. And whereby it was declared that the sd F. & G. their heirs exors admrs & assns should at the request or discretion therein mentioned sell the said freehold & copyhold ppty in manner thrin mentioned & shd stand possessed of the net moneys to arise from any such sale & the net rents & profits thereof or of the unsold parts thereof for the time being (after payment of the expenses thrin mentioned) upon the trusts to be declared concerning the same by an indre (hrinar called the settlement) of even date with & recited in the conveyance in trust for sale.

Surrender and admittance. And whas the sd copyhd ppty was on the —— day of —— duly surrendered to the use of the sd F. & G. & their hrs, psuant to the covt in that behalf contd in the conveyance in trust for sale, & the sd F. & G. were on the same day duly admitted thto:

Sale. And whas the ppty specified in the second schdle hto was on the —— day of —— sold by the sd F. & G., with the consent of the sd A. & B., & conveyed to the pchaser throf, in exon of the trusts of the conveyance in trust for sale: *Recite deaths of A., B. & G., & desire to appt K.* " to be a tree of the conveyance in trust for sale & also of the settlement " *in the place of G.*, p. 132. And whas it is intended that the appointment of the sd K. to be a tree of the settlement in the place of the sd G. shall be effected by a deed of even date with this deed & made between the same parties as are parties hereto: NOW THIS

Appointment of new trustee. DEED WITNESSETH that in exercise, &c., *Apptmt by F. of K. to be tree in the place of G.*, p. 129 (*b*). In witness, &c.

The Schdles.

(*b*) The deed will operate, without any express vesting declaration, to vest the trust estate in the continuing and new trustees (see *ante*, p. 125).

VII.

APPOINTMENT *of a* NEW TRUSTEE *of a* SETTLEMENT *of* MONEY *to be produced by the* SALE *of* REAL ESTATE *conveyed by* DEED *of* EVEN DATE *with the* SETTLEMENT IN TRUST FOR SALE *with a* DECLARATION *of* TRUST *of the* PURCHASE-MONEY *by reference to the* SETTLEMENT, *part of the property having been sold. To accompany the last Precedent.*

PARTIES, F., *survivg tree*, 1; K., *new tree*, 2. WHAS by an indre (hrinar called the settlemt) dated, &c., being a settlemt made in conson of the marre shortly aftwds solemnised betn the sd A. & B., certn trusts were decld concerng the net proceeds of sale of certn freehd & copyhd ppty conveyed & covted to be surrendered resply to the use of the sd F. & G. & their hrs by an indre of even date with & recited in the settlemt, & hrinar called the convce in trust for sale, & concerng the rents & profits throf until sale: AND WHAS pt of the freehd ppty assured by the convce in trust for sale was in the year —— sold psuant to the trust for sale thrin contd: AND WHAS the net proceeds of the sd sale (after paymt of costs [& duty]), amtg to £——, were on the —— day of —— invested by the sd F. & G., in the pchase in their names of the sum of £——, &c., Annies: AND WHAS the sd last-mentd sum was in the yr —— converted into the sum of —— 2¾ p.c. Consold. Stk reduced to 2½ p.c. in the year 1903: *Recitals of deaths of A., B. & G.:* AND WHAS by an indre of even date with these psnts & made betn the same pties as are pties hto, the sd K. has been duly appted by the sd F. to be a tree of the convce in trust for sale in the place of the sd G.: AND WHAS the sd F. is desirous of apptg the sd K. to be a tree also of the settlemt, in the place of the sd G.: AND WHAS it is intd that the sd sum of stk shd be forthwith transferred into the names of the sd F. & K. NOW THIS DEED WITNESSETH, &c., *Apptmt by F. of K. to be a tree thereof in the place of G.*, p. 129. IN WITNESS, &c.

Recitals.

Investment of sale moneys.

Conversion of stock.

Deed of even date appointing new trustees of conveyance.

Desire to appoint.

Appointment.

VIII.

APPOINTMENT *of an* ADDITIONAL TRUSTEE (*a*) *of a* WILL *of a* TESTATOR *who died prior to the commencement of the* TRUSTEE ACT, 1925, *containing a general devise and bequest of* FREEHOLD, COPYHOLD, LEASEHOLD, *and* PERSONAL ESTATE IN TRUST *for* CONVERSION (*aa*). PART *of the* PROPERTY *having been*

(*a*) See T. Act, 1925, s. 36 (6), and *ante*, p. 123.

Assent to bequest of personalty.

(*aa*) Where the same persons are appointed to be both executors and trustees as is usual where trusts are declared of the testator's residuary estate, the personal estate (other than leaseholds) remains vested in them as executors until, having cleared the estate of duties and legacies, they are deemed to have assented to the disposition of the residuary personal estate to themselves and can no longer make a title to any part thereof as executors: *Attenborough* v. *Solomon*, [1913] A. C. 76; *Re Timmins*, [1902] 1 Ch. 177; *Re Gompertz*, 56 Sol. J. 11; *Re Ponder*, [1921] 2 Ch. 59; *Wise* v. *Whitburn*, [1924] 1 Ch. 460. The appointment of a new trustee of the residuary personal estate is sufficient to raise the implication of assent thereto: *Re Tuck*, 30 Sol. Jo. 320.

Assent to devise of real and leasehold property.

S. 39 of the A. E. Act, 1925, confers upon representatives, for the purposes of administration, or during minority of any beneficiary, or the subsistence of any life interest, or until the period of distribution arrives, the same powers of management in respect of both real & personal estate as, prior to the Act, they had in respect of personal estate. The operation of this section coupled with s. 36 of the same Act which deals with the effect of assent in regard to real and leasehold estate, operates to eliminate the difficulty which owing to the doctrine of implied assent formerly beset the making of title to land under a will. Under s. 36 real estate (including chattels real) may be vested by assent in the person entitled thereto whether beneficially or as trustees; but the assent unless made in the prescribed manner, *i.e.* in writing and naming the person in whose favour it is given (sub-s. 4) will not be effectual to pass the legal estate. The purchaser in whose favour an assent to or conveyance of a legal estate is made may require notice thereof to be endorsed on the probate; and unless this has been done a conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of a statement in writing by the personal representative that no previous assent has been given will be effectual (except as against a previous purchaser) to pass the legal estate expressed to be conveyed. It is further provided (sub-s. 7) that an assent or conveyance in respect of a legal estate shall, in favour of a purchaser, unless the probate has been endorsed with notice of a previous assent, be taken as sufficient evidence that the person in whose name the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him upon the proper trusts, if any. "Conveyance" is defined (s. 55 (3)) to include "assent," "vesting declaration" . . . and every other assurance of property or of an interest therein by any instrument except a will. It follows that upon the appointment of a new or additional trustee by executors and devisees in trust for sale under a will all the property which previously to the appointment has remained

CONVERTED *and the* PROCEEDS *invested in various* SECURITIES. VARIATION *where the* COPYHOLDS *were not* DEVISED *to but* DIRECTED *to be* SOLD *by the* TRUSTEES.

PARTIES, A. & B., *present trees*, 1; C., *additional trustee*, 2. WHAS X., late of, &c., deced, by his will dated, &c., after bequeathg certn legacies & annies, devised & bequed all his freehd [copyhd] & leasehd estes, & all the residue of his psonal este unto & to the use of the sd A. & B., their hrs, exs, ads, & assns resply, upon the trusts thrinar mentd, & he thby directed his sd trees to sell, convert, & get in the same [& also all his, the sd testor's, copyhd estes] & to invest the residue of the proceeds throf (after paymt of his funl & testy expses & debts & the legacies thby bequeathed) as thrin mentd: AND the sd testor thby authorised the postponemt of such sale & conversion: AND appted the sd A. & B. exs of his sd will: AND WHAS the sd testor died on the —— day of —— witht havg revoked or altered his sd will, wch was duly proved by the sd A. & B. in the Ppal, *or*, "—— District" Probate Registry on the —— day of ——: AND WHAS all the funl & testy expses & debts of the sd testor, & the duties payable at his death, & the legacies bequed by his sd will have been fully pd & satisfied, and one of the annies thby bequeathed has ceased by the death of the annuitant, & all arrears throf have been pd, & the sum of £——, &c., Annies was appropriated & invested in the names of the sd A. & B. to answer such of the annies thby bequeathed as were payable: AND WHAS such last mentd sum was in the yr —— sold & the proceeds invested in, &c.: AND WHAS pt of the sd testor's residuary psonal este has been got in & realised by the sd A. & B., & the clear proceeds throf (after such paymts & approprions as afsd) have

Recitals of will (*b*).

Death and probate.

Admittance to copyholds.

Executorship wound up.

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vested in them, with all the powers of personal representatives conferred by s. 39 of the A. E. Act, 1925, will automatically become vested in the new trustees as trustees with all the powers of management conferred by the L. P. Act, 1925, s. 28, on trustees holding land in trust for sale.

Notice of the "conveyance" to the new trustees should be endorsed on the probate.

As to making appointment supplemental to will.

(*b*) The appointment may, for greater brevity, be treated as supplemental to the will (L. P. Act, 1925, s. 58), in which case it will be expressed as "suppl to the will of X., late of, &c., dated, &c., & proved, &c."

Present state of trust funds.

been invested by them in the pchase in their names of divers stks, funds, shares, & secs, psuant to the trusts of the sd will, & some of such investmts have since been transposed, & the parlars of the psnt investmts throf (inclusive of the investmt appropriated to provide for the sd annies) are specified in the first schdle hto (*a*) : And whas the copyhd estes of the sd testor became vested on enfranchisement under the Law of Ppty Act, 1922, in the sd A. & B. as trees for sale of the freehd in fee simple throf (*b*) : And whas the real & leasehd estes of the sd testor none of wch have yet been sold psuant to the trusts of his sd will, consist of, &c., *short parlars referrg, if convenient, to a second schdle :* And whas certn portions of the sd testator's psonal este other than leaseholds are also still outstandg or unrealised, & consist of, &c., *short parlars referrg, if convenient, to a third schdle :* And whas the sd A. & B. are desirous of apptg the sd C. to be an additional tree of the sd will : And whas the sevl stks, funds, shares, & secs specified in the sd first schdle hto are intd to be forthwith transferred into the jt names of or so as to be under the jt legal control of the sd A., B., & C. : NOW THIS DEED WITNESSETH as follows :—

Real and leasehold estate not converted.

Personal estate still outstanding.

Desire to retire and appoint.

Intention to transfer stocks.

Appointment (*b*).

1. *Apptmt by A. & B. under the statutory power* ( ) *of C.* " to be an additional tree of the sd will to act jointly with them for all the ppses of the sd will or such of the same ppses as are still subsisting & capable of taking effect."

[2. *Clause limiting operation of implied statutory vesting declaration*, p. 130.**]**

In witness, &c.

The first Schdle above referred to.

[*Investmts.***]**

The second Schdle above referred to.

[*Real & leasehd estes.***]**

(*a*) It is sometimes more convenient to set out the accounts in full in a schedule.

(*b*) This form of recital will suffice whether the copyholds were devised to the trustees or merely directed to be sold (see L. P. Act, 1922, Schedule 12, 1 (e) and 8 (e) (v).

A freehd farm & lands known as ——, situate, &c., & comprisg —— acres or thrabts.

A freehd plot of land situate, &c., adjoing, &c., containg, &c., or thrabts.

A freehd messe or tenemt, situate, &c., formerly copyhold of the manor of ——.

A leasehd messe & land at, &c., held under a lease, dated, &c., for a term of —— yrs, from, &c., at the yrly rent of, &c.

The third Schdle above referred to.

[*Outstandg psonal este.*]

A revy share or intt in a legacy of £—— under the will of X., proved at —— on the —— day of, &c.

A sum of £—— due from, &c., on the secy of a bond, dated, &c.

IX.

APPOINTMENT *by* SURVIVING EXECUTOR *and* TRUSTEE *of a* WILL *of separate sets of* TRUSTEES *for distinct parts of the* PROPERTY *held under distinct* TRUSTS (*a*), *in place of* HIMSELF *and* DECEASED TRUSTEE.

Parties.

Parties, A., *retirg tree*, 1; B. & C., *new trees of pt of trust ppty*, 2; D. & E., *new trees of remr of trust ppty*, 3; *Recite will givg real & psonal ppty to A. & X., upon trust to convert, &c.*, p. 143, *& to hold investmts after death of testor's wife as to one moiety upon trust for testor's son, Y., his wife & chln & next-of-kin, & as to the other moiety upon trust for testor's daur Z., her husbd & chln & next-of-kin. Death of testor & probate of will*, p. 143. *Conversion, &c., & investmt of residuary este*, p. 143. *Death of wife. Death of X.* AND WHAS the investmts specified in the first schdle hto representg one eql moiety of the net proceeds of the sale & conversion of the residuary este of the sd testor have with the consent of the sd Y. (*x*) been appropriated by the sd A. to be held upon the trusts decld by the

Recitals.

Appropriation of distinct portions of trust estate.

(*a*) See *ante*, p. 124, and note (*aa*) to last Precedent. It will generally be convenient to appoint trustees for distinct parts of the property by separate deeds.

(*x*) As to the personal representative's power of appropriation and the requisite consents thereto see A. E. Act, 1925, s. 41.

sd will for the benefit of the sd Y., & his wife & chln & next-of-kin, & the investmts specified in the second schdle hto representg the other eql moiety of the same net proceeds, have with the consent of the sd Z. (*x*) been appropriated by the sd A. to be held upon the trusts decld by the sd will for the benefit of the sd Z., her husbd & chln & next-of-kin, *Desire of A. to retire, & to appt B. & C.* " new trees of the sd first mentd moiety of the sd trust premes," *& D. & E. of the second moiety*, p. 132, *& their consent.* NOW THIS DEED WITNESSETH as follows :—

Witnesseth.

Appointment of trustees of part of trust property.

1. In psuance of the sd desire the sd A. in exse of the pwrs in this behalf conferred upon him by the sd will or the statute in that behalf, & of every or any other power, &c., hby appts the sd B. & C. to be trees of the sd will in the place of the sd X., deced, & of him the sd A. so far as regards the moiety of the residuary este of the sd testor wch was bequed by his sd will upon trust for the sd Y., his wife & chln & next-of-kin as thrin mentd, AND hby declares that all the investmts & ppty specified in the first schdle hto shl immedly upon the exon of these psnts vest in the sd B. & C. as jt tenants & for the pposes of the trust last afsd, for all the este & intt thrin previously vested in the sd A.

Vesting declaration (*a*).

2. *Similar apptmt & declon as to the other moiety* (*b*).

IN WITNESS, &c.

Schdles of investmts.

X.

APPOINTMENT *by* EXECUTORS *of* TRUSTEES *of* INFANTS' PROPERTY *under s.* 42 *of the* ADMINISTRATION OF ESTATES ACT, 1925 (*c*).

PARTIES, A. & B. *executors*, 1 ; C. & D. *trustees*, 2. WHAS X. late of, &c., deced by his will dated, &c., apptd the sd A. & B.

(*x*) See note (*x*), p. 145.

(*a*) If the trust estate contains property which cannot pass by vesting declaration, it may be vested by assignment in the old way. If it consists of Stock Exchange investments or mortgages, it will be transferred separately in the usual way, and a declaration of trust added.

(*b*) The new trustees who retain this deed should give an acknowledgment to the other new trustees.

(*c*) The executors are authorised upon any such appointment to execute

to be exors thof & thereby amongst other dispositions gave & devised the freehd ppty mentd in the Sched hereto by the description of, &c., to Y., the son of —— therein mentd and also gave to the sd Y. a legacy of £——, and the sd devise & legacy were resply thereby devised & bequeathed without the intervention of any trees for the sd Y. *Death of testator & probate.* AND WHAS the sd Y. is now an infant of the age of —— years or thereabouts & the sd A. & B. are desirous of apptg the sd C. & D. to be trees of such devise & legacy resply & also to be trees of the ppty mentd in the Sched hereto for the ppses of the S. L. Act, 1925, & of the statutory provons relating to the management of land during a minority. AND WHAS it is intended that the sd legacy of £—— shall forthwith be paid to the sd C. & D. NOW THIS DEED WITNESSETH that in pursce of the sd desire & in exercise of the power given to them by s. 42 of the Administration of Estates Act, 1925, in this behalf & of every other power them enabling the sd A. & B. hereby appt the sd C. & D. to be trees of such devise & legacy as afsd for the sd Y. & to be trees of the freehd ppty mentd in the Sched hereto for all the ppses of the Settled Land Act, 1925, & of the statutory provons relating to the management of land during a minority. IN WITNESS, &c.

The Schdle.

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or do any assurance or thing requisite for vesting the devise or legacy in the trustees: A. E. Act, 1925, s. 42. For the purposes of s. 40 of the T. Act, 1925, a new trustee includes an additional trustee (s. 68 (7)), but does not appear to include a trustee appointed by an executor under the powers conferred by s. 42 of the A. E. Act, 1925. The last mentioned Act, however, enables (s. 36) a personal representative to assent to the vesting of real estate in any person who (whether by devise, bequest, devolution, or appropriation or otherwise) may be entitled thereto either beneficially or as a trustee. It seems, therefore, that in the case of such an appointment as is here made, the proper mode of vesting the freeholds in the trustees is by vesting assent, separately executed. See S. L. Act, 1925, ss. 9 (2), 30.

XI.

APPOINTMENT *of* NEW TRUSTEES *of a* WILL *containing bequests of settled legacies to the trustees,* ONE TRUSTEE *having* DIED, *another having* REFUSED *to act, and the third* RETIRING. *The* BENEFICIARIES *who are sui juris* JOIN *to testify their* APPROVAL *and* RELEASE *the* RETIRING TRUSTEE (*d*).

PARTIES, A., *retirg tree & donee of power*, 1; X., Y., *& Z., beneficiaries*, 2; H. *& K., new trees*, 3. *Recite will* (*e*), *noticg the bequests of settled legacies to the trees, A., D., & F., & the apptmt of them to be exors: Death of testor;* [*assent of exors, if not also trees, to bequests:*] AND WHAS the sd F., one of the trees appted by the sd will, died in the lifetime of the sd testor, namely on the —— day of ——: AND WHAS the sd will was duly proved by the sd A. alone in the —— Registry on the —— day of ——: AND WHAS the sd D. renounced probate of the sd will, & never acted in the admon of the este of the sd testor or the exon of the trusts of the sd will, & declined to accept such trusts [& by deed poll under his hand & seal, dated, &c., disclaimed the sd trusts, & also all the personal estate & premes by the sd will bequeathed as afsd]. [*Recitals showing that exorship has been wound up, see last Precedent, & the intts of the beneficiaries X., Y., & Z.:*] AND WHAS the sd A. is desirous of being discharged from the treeship of the sd will & it is desired to appt the sd H. & K. to be trees of the sd will in the place of the sd A. & D. & F. (*g*): AND WHAS the sd A. has agrd at the request of the sd pties hto of the second pt to make the sd apptmt, upon their joining hrin to testify their approval, & to give him such release as is hrinar contd, wch they have agrd to do: NOW THIS DEED WITNESSETH as follows:—

Recitals.

Death of one trustee in testator's lifetime.

Probate.

Another trustee having renounced.

Desire to retire and appoint.

Agreement as to beneficiaries joining.

Appointment.

1. *Apptmt under the statutory power, by A.*, " with the approval

(*d*) Trustees sometimes stipulate for a release on their retirement, but a complete release cannot, of course, usually be given. See for other forms Vol. 2, "RELEASES."

(*e*) Unless the appointment is supplemental, see p. 143, note (*b*).

(*g*) As an additional trustee may at any time be appointed to restore the original number (see T. Act, 1925, s. 36 (6)), it is no longer necessary, as formerly, to leave the third vacancy expressly unfilled.

(hby testified) of the sd pties hto of the second pt," *of H. & K. to be trees in the place of A. & D. & F.*, p. 129 :

Release to retiring trustee.

2. In further psuance of the sd apptmt & in conson of the premes the sd pties hto of the second pt do resply hby to the extent of their intts & ability release the sd A., & his represves, from all claims, demands, actions, & proceedings in respt of the sd trust este & premes under the sd will of the sd testor & the trusts throf or in respt of any sale, investmt, or transposon of investmt, paymt, or other dealg, or anythg done or omitted by the sd A. in respt throf or orwise howsoever in relation thto.

In witness, &c.

XII.

DISCLAIMER *and* Appointment *of* New Trustees *by the* Disclaiming Trustee (*b*) *under a* Will *bequeathing* Settled Legacies *to trustees.*

Recitals.

Parties, A., *disclaimg tree*, 1 ; C. *& D., new trees*, 2. *Recite will of X., setting out the legacies to A. & B.* " upon certn trusts thrin mentd," *& the apptmt of K. to be exor ; Death of testor, & grt of probate to C.* And whas by a deed poll dated, &c., under his hand & seal, the sd B. has renounced & disclaimed all the psonal este & premes by the sd will bequeathed to him jtly with the sd A., & all trusts, powers, & authorities vested in him the sd B., whether jtly with the sd A. or orwise, & the office of tree under the sd will [*or recite death of B., in testor's lifetime, as the case may be* (*a*)] : And whas the sd A. has declined to accept the beqts made to him jtly with the sd B. in & by the sd will, or to act as tree thrunder, except for the ppose of exercisg the power of apptg new trees throf in the place of the sd B., & of him the sd A., wch he has agrd to do by apptg the sd. C. & D. to be such trees in mner hrinr mentd : NOW THIS DEED WITNESSETH as follows :—

Witnesseth.

(*b*) See *ante*, p. 120, and *post, sub tit.* "Disclaimer." Both the disclaiming trustees might, of course, concur in the appointment, but it is here assumed that the one first disclaiming objects to do so. The property of which the settled legacies consist, being vested in the executors of the will, must if and when necessary, be transferred by them to the trustees in the appropriate manner. The appointment itself will not operate to divest the executors of their estate.

(*a*) If B. survived the testator and acted, his executors and administrators, and not A., would be the proper persons to appoint the new trustees under the usual power.

1. The sd A. hby, &c., *Disclaimer by A., see post, sub tit.* "DISCLAIMER," save & except the power of apptg new trees of the sd will wch is hrinar exercised by him, the sd A.

2. *Apptmt by A. of C. & D. to be new trees in the place of B. & A.*, p. 129.

3. *Clause excluding implied statutory declaration*, p. 130, f. 6 (*a*).

IN WITNESS, etc.

XIII.

APPOINTMENT *by* SUPPLEMENTAL DEED *of a* NEW TRUSTEE *of a* STRICT SETTLEMENT *of* FREEHOLDS *and* LEASEHOLDS *made prior to the commencement of the* SETTLED LAND ACT, 1925 (*b*).

PARTIES, A., *tenant for life & donee of power of appointing new trees*, 1; F., *retiring tree*, 2; H. *&* K. *continuing trees*, 3; *L., new tree*, 4. Supplemental to an indre (hrinar called the ppal indre) dated, &c. (being or now constituting for the purposes of the Settled Land Act, 1925, the Trust Instrument of a settlemt made in contemplation of the marriage shortly afterwards solemnized betn the sd A. & B.) under or by virtue whereof & of a vestg deed dated &c. and made psuant to the sd Act certain freehold & leasehold ppty situate &c. is now vested in the sd A. upon trusts under which the sd A. is tenant for life in posson throf and whby the sd F. H. & K. were apptd to be trees throf for all the pposes of the Settled Land Acts, 1882 to 1890 [& of s. 42 of the Conveyancing Act, 1881] and power was given to the sd A. to appt new trees throf. AND WHAS particulars of the investments and moy now subjt to the trusts of the ppal indre & representing capital moy of the sd settlmt are contained in the Schedle hrto all wch investmts & moy are now standg in the names of the sd F. H. & K.: *Desire of F. to retire*, p. 144; *Desire of A. to appt new tree*, p. 144.

(*a*) The insertion of this clause, though unnecessary, may be useful to prevent misunderstanding.

(*b*) See the T. Act, 1925, s. 64, and *ante*, p. 125. A memorandum of the names and addresses of the persons who are for the time being the trustees of the settlement for the purposes of the Settled Land Act, 1925, must be endorsed on or annexed to the last or only principal vesting instrument (T. Act, 1925, s. 35 (2)); and a deed of declaration must be executed as required by the S. L. Act, 1925, s. 35 (see Prec. XIV., *infra*.

AND WHAS the investmts & sum of cash specified in the Schdle hrto are intended to be forthwith transferred by the sd F. H. & K. into the joint names of the sd H. K. & L. NOW THIS DEED WITNESSETH as follows :—

1. *Apptmt by A. of L.* " to be a tree of the ppal indre in the place of the sd F. for all the pposes for which the sd F. was apptd a tree by the ppal indre or such of the same pposes as are still subsistg & capable of taking effect " (*c*).

[2. This deed shall not operate to vest in the sd H. K. & L. the right to recover & receive the mtge debts specified in the Schdle hrto which mtge debts it is intended shall be separately transferred to them along with the securities for the same.**]**

IN WITNESS, &c.

Schdle.

XIV.

DECLARATION BY DEED SUPPLEMENTAL *to the* PRINCIPAL VESTING DEED *made pursuant to s.* 35 *of the* SETTLED LAND ACT, 1925 (*to accompany the last Precedent* (*a*)).

THIS DEED OF DECLARATION made, &c., Betn A. *the donee of the power of apptg new trees of the Settlemt,* 1 ; H. K. & L. *present trees of the Settlmt for pposes of the Settled Land Act,* 1925, 2 ; F., *retiring tree,* 3. WHAS this deed is supplemental to a ppal vestg deed ((hrinar called the Ppal Deed) dated, &c., whereby certain freehld **[**& leasehold ppty**]** then subject to the

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(*c*) Trustees so appointed are constituted by virtue of s. 31 of the S. L. Act, 1925, trustees for the purposes of the Act of any compound settlement constituted by the instrument of which they are expressly appointed to be trustees and any instruments subsequent in date or operation ; and by virtue of s. 32 of the same Act are also constituted trustees of any settlement taking effect by reference to the settlement of which they are appointed the trustees, except where, in the latter case, the settlement by reference contains an appointment of trustees thereof for the purposes of the Act. See also s. 91 of the Act in which provision is made for treating estates settled by different settlements upon the same limitations as one aggregate estate.

(*a*) The execution of this deed is required by s. 35 of the S. L. Act, 1925, on the appointment of new trustees for the purposes of that Act, in addition to the endorsement on the principal vesting deed required by s. 35 of the T. Act, 1925.

limitations [& trusts] of an indre of settlmt dated, &c., & made, &c., was vestd in the sd A. upon the trusts & subjt to the powers & provons upon & subjt to wch under the sd indre of settlmt or orwise the same ought from time to time thenceforward to be held. And whas by a deed of apptmt dated, &c., the sd L. was duly apptd by the sd A. to be a tree of the sd indre of settlmt for all the pposes of the S. L. Act, 1925, in the place of the sd F. who retired from the trusts throf [*or* who was unfit to act in the trusts throf *or as the case may be*] (*b*) NOW for giving effect to the requiremts of the S. L. Act, 1925, THIS DEED WITNESSETH & it is hby decld that the sd H. K. & L. are the trees of the settlmt subsistng under or by virtue of the Ppal Indre & the sd indre of settlmt for all the pposes of the sd Act. In witness, &c.

XV.

APPOINTMENT *by* Supplemental Deed *of a* New Trustee *of a* Strict Settlement *of* Freeholds *and* Leaseholds *made after the commencement of the* Settled Land Act, 1925 (*a*).

Parties, A., *tenant for life & donee of power of apptg new trees*, 1; F., *retiring tree*, 2; H. & K. *continuing trees*, 3; L., *new tree*, 4. Supplemental to a Trust Instrument dated, &c., & made, &c. (being the Trust Instrument of a Settlmt made on the marriage shortly afterwards solemnized betn the sd A. & B.). Whereby trusts were decld of certn freehld & leasehld ppty situate, &c., under wch the sd A. is tenant for life in posson throf, & whby the sd F. H. & K. (who were the psons by the sd Trust Instrument constituted trees throf) were also apptd to be trees of the sd settlmt for all the ppses of the Settled Land Act, 1925 [& for the ppose of the managmt of land durg a

(*b*) This statement is conclusive evidence, in favour of a purchaser of a legal estate, of the matter stated (S. L. Act, 1925, s. 35).

(*a*) See the T. Act, 1925, s. 64, and *ante*, p. 125. A memorandum of the names and addresses of the persons who are for the time being the trustees of the settlement for the purposes of the S. L. Act, 1925, must be endorsed on or annexed to the last or only principal vesting instrument (T. Act, 1925, s. 35 (2)); and a deed of declaration must be executed as required by the S. L. Act, 1925, s. 35 (see Prec. XVI., *infra*).

minority] & power was given to the sd A. to appt new trees throf & also of the sd settlmt." *Recite parlars of investments of capital money*, p. 144; *Desire of F. to retire*, p. 144; *Desire of A. to appt new trees*, p. 144; *Intention to transfer investments*, p. 144.

NOW THIS DEED WITNESSETH as follows:—

1. In exercise of the power for this ppose conferred on him by the sd trust instrument, &c., p. 119; *apptmt by A. of L.* " to be a tree of the sd trust instrument in the place of the sd F. for the several pposes for wch the sd F. was apptd a tree by the sd trust instrument " (*x*).

[**2.** *Clause limiting operation of implied statutory vesting declaration*, p. 130.]

IN WITNESS, &c.

XVI.

DECLARATION *by* DEED SUPPLEMENTAL *to the* PRINCIPAL VESTING DEED *made pursuant to s.* 35 *of the* SETTLED LAND ACT, 1925 (*to accompany the last Precedent* (*c*)).

THIS DEED OF DECLARATION made, &c., Betn A. *the donee of the power of apptg new trees of the settlemt*, 1; H. K. & L. *present trees of settlemt for pposes of Settled Land Act*, 1925, 2; F., *retirg tree*, 3. WHAS this deed is SUPPLEMENTAL to a ppal vestig deed (hrinar called the Ppal Deed), dated, &c., whby certain freehld [& leasehld] ppty was vestd in the sd A. upon the trusts of a trust instrument of even date therewith. *Recite apptmt of trees* " of the sd trust instrument " *for the ppses of the S. L. Act*, 1925. NOW for giving effect to the requiremts of the Settled Land Act, 1925, THIS DEED WITNESSETH & it is hby decld that the sd H. K. & L. are the trees of the settlmt effected by the ppal deed & the sd trust instrument for all the ppses of the sd Act. IN WITNESS, &c.

(*b*) See *ante*, p. 151, note (*c*).

(*c*) See the notes to Prec. XV.

XVII.

APPOINTMENT *by* SUPPLEMENTAL DEED *of a* NEW TRUSTEE *of a* SETTLEMENT *for the purposes of the Settled Land Act,* 1925, *where the* ORIGINAL TRUSTEES *have been* APPOINTED *by the* COURT (*a*).

PARTIES, A., *tenant for life & donee of power of appty new trees of the ppal indre,* 1 ; *X., continuing tree for the ppses of the Settled Land Act,* 2 ; *K., new tree,* 3. SUPPLEMENTAL to an indre (hrinar called the Principal Indre), dated, &c. (being or now constituting for the pposes of the Settled Land Act, 1925, the trust instrument of a settlmt made in contemplon, &c.) under or by virtue whof & of a vestg deed dated, &c., & made psuant to the sd Act certain freehld ppty situate, &c., is now vested in the sd A. upon trusts under which the sd A. is tenant for life in posson of the sd ppty & has power to appt new trees of the ppal indre. AND WHAS the sd X. & Y. were by the ppal indre apptd to be trees throf but were not thrby apptd or orwise constituted trees throf for the pposes of the Settled Land Acts, 1882 to 1890. AND WHAS by an Order of the Chancery Division of the High Court of Justice made by Mr. Justice —— on the —— day of —— in the matter of —— & of the Settled Land Acts, 1882 to 1890, upon the applicon of —— the sd X. & Y. were appointed trees of the settlmt created by the ppal indre for the pposes of the Settled Land Acts. *Recite particulars of investments of capital money,* p. 144 ; *Death of Y.* ; AND WHAS the sd A. is desirous of apptg the sd K. to be a tree of the ppal indre for all the pposes of the Settled Land Act, 1925, in the place of the sd Y. *Intention to transfer investments,* p. 144. NOW THIS DEED WITNESSETH as follows :—

1. In pursce of the sd desire & in exercise of the statutory power for this ppose & of every other power him enabling the sd A. hereby appts the sd K. to be a tree of the ppal indre & of the settlmt of which the principal indre is or now constitutes the trust instrument as afsd for all the pposes of the Settled Land Act, 1925, in the place of the sd Y. & to act jointly with the sd X. for the pposes lastly hrinbfe mentd.

(*a*) See T. Act, 1925, s. 64, and note p. 152.

[**2.** *Clause limiting operation of implied statutory vesting declaration*, p. 130.]

In witness, &c.

XVIII.

APPOINTMENT *of a* New Trustee *of a* Will *of* Real Estate *for the pposes of the* Settled Land Act, 1925, *where the* Original Trustees *were* Trustees *for the pposes of the Settled Land Acts*, 1882 *to* 1890 (*a*).

Parties, A., *donee of power*, 1; *F., retirg tree*, 2; H. & K., *continuing trees*. 3; L., *new tree*, 4. Whas X., late of, &c., deced duly made his will, dated, &c., & thrby among other dispositions devised certain freehld ppty situate, &c., to uses under which the sd A. became & is now tenant for life in posson throf. And the testor thrby apptd the sd F. H. & K. to be trees throf for the ppses of the S. L. Acts, 1882 to 1890, & decld that the power of apptg a new tree or new trees throf shd be vested in the sd A. during his life. *Death of testor & probate; Assent of exors if not also trees.* And whas under or by virtue of the S. L. Act, 1925, & a vesting deed, dated, &c., & made psuant to the sd Act the sd Will now constitutes the trust instrument for the pposes of the sd Act of the settlement thrby made. *Recite parlars of investments of capital money*, p. 144; *Desire of F. to retire*, p. 144; *Desire of A. to appt new tree*, p. 144; *Intention to transfer investments*, p. 144. NOW THIS DEED WITNESSETH as follows:—

1. *Apptmt by A. of L.* "to be a tree of the sd will in the place of the sd F. for all the ppses for wch the sd F. was apptd a tree by the sd will or such of the same ppses as are still subsisting & capable of taking effect (*b*).

(*a*) The will is the trust instrument for the purposes of the S. L. Act, 1925. If the original trustees were not trustees for the purposes of the S. L. Acts and the settled land were vested at the commencement of the Act of 1925 in the personal representatives of the testator, such personal representatives would be trustees for the purposes of that Act, and the proper persons to appoint new trustees. See next Precedent.

(*b*) See *ante*, p. 151, note (*c*). A memorandum must be endorsed pursuant to the T. Act, 1925, s. 35 (2), and a deed of declaration executed as required by S. L. Act, 1925, s. 35. The deed of declaration will be in similar form to Prec. XIV. with the substitution of references to the will for references to the principal indenture.

[2. *Clause limiting operation of implied statutory vesting declarn*, p. 130.]

In witness, &c.

XIX.

APPOINTMENT *by* Executor (*a*) *psuant to s.* 30 *of the Settled Land Act*, 1925, *of an* Additional Trustee *of a* Settlement *of* Land *created by the* Will *of a* Testator *who died after the commencement* (*b*) *of the Act.*

Parties, X., *sole exor & tree of will*, 1; Y., *additional tree*, 2; *Recite will setting out the disposition creating the Settlement & apptg X. to be sole exor & tree throf* " but the sd will contained no power or trust for sale of the sd ppty or of any other ppty thrby devised & no apptmt of trees for the pposes of the Settled Land Act, 1925." *Death of testor & probate.* And whas for the ppose of giving effect to the requirements of s. 30 of the Settled Land Act, 1925, the sd X. is desirous of appointg the sd Y to be an additional tree of the settlemt created by the

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(*a*) Where a settlement is created by will or arises under an intestacy the personal representatives of the testator, if otherwise there would be no trustees for the purposes of the S. L. Act, 1925, and until other trustees for the purpose are appointed, are constituted such trustees by s. 30 (3) of the Act; but if there is but one such trustee, not being a trust corporation, it is obligatory upon him, and he is given power to appoint another to act with him. By the same section it is provided that the provisions of the Trustee Act, 1925, relating to the appointment of new trustees and the vesting of trust property are to apply accordingly. If follows that where land and personal property are settled by the same will upon different trusts and the trustees of the will are not constituted trustees for the purposes of the Act within sub-s. 1 of the same section, the trusteeship of the two settlements is automatically severed. The appointment of new or additional trustees of the will will not affect the powers of the personal representatives as trustees for the purposes of the Act; and the trusteeship for the purposes of the Act may be continued indefinitely by the appointment of new or additional trustees on the death or retirement of a personal representative by the other of them by virtue of the concluding provision of the sub-section.

(*b*) The section would equally apply if the testator died before January 1, 1925, and the settled property remained vested in the personal representative as such at that date. In either case a vesting assent will have become necessary to vest the property in the tenant for life or statutory owner and the will is the trust instrument for the purposes of the Act (S. L. Act, 1925, ss. 6, 8; and Second Schedule, para. 2).

sd Will of the sd ppty to act with him for the pposes of the sd Act. NOW THIS DEED WITNESSETH that in psuance of the sd desire & in exercise of the power given to him by the sd Act in this behalf & of every other power him enabling the sd X. hby appts the sd Y. to be a tree of the settlement created by the sd will for the pposes of the Settled Land Act, 1925, to act jointly with the sd X. for the pposes lastly hereinbfre mentd. IN WITNESS, &c. (*c*).

XX.

DEED *executed on the* RETIREMENT *of one of three* TRUSTEES *of a* PERSONALTY SETTLEMENT *without the appointment of a* NEW TRUSTEE *in his place* (*d*).

PARTIES, A., *donee of power of apptg new trees*, 1; B., *retirg tree*, 2; C. & D., *continuing trees*, 3. Suppl to an indre (hrinar called the settlemt), dated, &c., WITNESSETH, as follows :— Parties.

1. THE sd B. hby declares that he is desirous of being discharged from the trusts of the settlemt. Desire to be discharged.

2. THE sd A., C., & D. hby consent to the discharge of the sd B. from such treeship, & to the vestg in the sd C. & D. alone of the ppty now held upon or subjt to the trusts of the settlemt [the short parlars of wch are stated in the schdle hto (*f*).] Consent of appointor and continuing trustees (*e*).

[**3.** *Clause limiting operation of implied statutory vesting decln*, p. 130.]

IN WITNESS, &c. (*a*).

[The Schdle above referred to.]

(*c*) A vesting assent must be executed by the executor pursuant to the S. L. Act, 1925, s. 9; but there appears to be no objection to the appointment of the additional trustee for the purposes of the Act preceding the assent so as to avoid the necessity of endorsement and supplemental declaration.

(*d*) See T. Act, 1925, ss. 39 and 40; P. T. Act, 1906, s. 5 (2); and *ante*, p. 124. As to the stamp, see Fin. Act, 1902, s. 9.

(*e*) These consents are not required where the retirement is from a trust of which the Public Trustee has been appointed a trustee: P. T. Act, 1906, s. 5 (2); *ante*, p. 125.

(*f*) It would be proper, though not essential, to insert a short statement of what the trust property consists of, referring if convenient to a schedule. In the above precedent, property separately transferred will be included in the second part of the schedule.

(*a*) Proper notices of the deed with respect to any choses in action should be given.

XXI.

APPOINTMENT *of the* PUBLIC TRUSTEE *as* SOLE TRUSTEE *of a* SETTLEMENT *in the place of* TWO RETIRING TRUSTEES (*b*).

Recitals. *PARTIES*, A. & B., *donees of the power of appointing new trees*, 1; C. & D. *retiring trees*, 2; the Public Trustee, 3. WHAS by an indre dated &c. & made &c. trusts were declared concerning certain ppty wch is now represented by the ppty specified in the schdle hto wch is standing in the names of the sd C. & D. the psnt trees of the sd indre & the power of appointing new trees throf was thereby vested in the sd A. & B. AND WHAS the sd C. & D. desire to be discharged from the trusts of the sd indre & the sd A. & B. desire to appt the Public Trustee as sole tree in their place AND WHAS it is intended that the ppty specified in the schdle hto shd be forthwith transferred into the name of the Public Tree: NOW THIS DEED WITNESSETH that in exercise &c. the sd C. & D. hby appt the Public Tree to be sole tree of the sd indre in place of the sd C. & D. (*c*).

Wit-nesseth.

IN WITNESS, &c.

The Schdle above referred to.

XXII.

APPOINTMENT *of the* PUBLIC TRUSTEE (*d*) *as a* CUSTODIAN TRUSTEE *by* MANAGING TRUSTEES *of a* WILL, *the latter still continuing to act.* VARIATION *where* BENEFICIARIES *who are sui juris join to testify their approval.*

PARTIES, A. & B., *the managing trustees and donees of power*, 1; [X., Y., & Z., *beneficiaries* (*e*), 2]; the Public Trustee, 3:

(*b*) See *ante*, p. 127. The consent of the Public Trustee to act should be obtained before the appointment is executed.

(*c*) If necessary add clause limiting operation of implied statutory vesting declaration.

(*d*) The Public Trustee is a corporation sole having an official seal (see the

(*e*) The concurrence of the beneficiaries, though not necessary to the valid appointment of the Public Trustee as custodian trustee, may sometimes be desirable.

Recite will as far as material with trusts in favour of X., Y., & Z., noticing apptmt of A., B., & C. as original trees & power (if any) to appt new trees; Codicils; Death of testator; Probate; Death of C.: AND WHAS the sd A. & B. while retaing the managemt of the trust ppty comprd in the sd will & codls are desirous of apptg the Public Tree to have the custody of all the secs & documts (*a*) of title relatg to the sd trust ppty: AND WHAS parlars of all the secs & documts of title relatg thto are specified in the schdle hto, as they the sd A. & B. hby Recitals.

P. T. Act, 1906, s. 1), and has a licence in mortmain dated the 1st January, 1908: see 25 L. Q. R. 125. The Public Trustee.

The Public Trustee (P. T. Act, 1906, s. 2 (1) (b)) and any incorporated Banking or Insurance or Guarantee or Trust Company or other corporate body for the time being empowered by the Act of Parliament Charter Memorandum of Association Deed of Settlement or other instrument constituting it or defining its powers (P. T. Rules, 1912, r. 30) may be appointed custodian trustee of any trust by the person having power to appoint new trustees or by order of the Court or by the creator of the trust, P. T. Act, 1906, s. 4, subs. 1 and 3; and any such corporate body so appointed will be entitled to act as custodian trustee subject to the qualification mentioned in the same Rule. Custodian trustees.

A custodian trustee may be appointed although no vacancy has occurred in the office of trustees: *Re Cherry*, [1914] 1 Ch. 83.

Upon the appointment of a custodian trustee, the trust property must be transferred to him as if he were a sole trustee, and for this purpose vesting orders may where necessary be made under the T. Act, 1925. Transfer of trust property.

A custodian trustee, whose position is defined by s. 4 (2) of the Act of 1906, is not an ordinary trustee, nor is he apparently "a new trusteee appointed to perform any trust" within s. 40 of the T. Act, 1925, in whom the trust property can be vested by vesting declaration under s. 40 of the T. Act, 1925. Vesting declaration.

The following are some of the more important provisions of s. 4 (2) of the Act of 1906 relating to the position of the custodian trustee in regard to the ordinary or managing trustees:—The custodian trustee is not to be reckoned as a trustee in determining the number of trustees for the purposes of the T. Act, 1925. He is to have the custody of all securities and documents of title relating to the trust property, but the managing trustees are to have free access thereto and to be entitled to take copies or extracts. The management of the trust property and the exercise of any power, including the power of appointing new trustees, is to remain vested in the managing trustees, and the custodian trustee is to concur in and perform all acts necessary to enable the managing trustees to exercise such powers. Powers of custodian and managing trustees respectively.

The custodian trusteeship may be terminated by an order made by the Court for that purpose. Termination of custodian trusteeship.

As to the appointment of the Public Trustee as an ordinary trustee, see *ante*, p. 123; and as a judicial trustee, *ante*, p. 128. See also the P. T. Rules, 1912, set out [1912] W. N., pt. 2, p. 173.

(*a*) If some of the trust property is subject to a mortgage this will require modification.

admit : And whas the Public Tree has expressed his willingness to act as such custodian tree as afsd : And whas the sd A. & B. have already handed over to the Public Tree the sd secs & documts of title & the same are now in his custody, as he hby admits : NOW THIS INDRE WITNESSETH as follows :—

Witnesseth.

1. The sd A. & B., [with the approval (hby testified) of the pties hto of the second pt] in exercise of the power for this ppse vested in them by the sd will & the statute in that behalf, & of every other power, &c., hby appt the Public Tree to be the custodian tree of the sd secs & documts of title, & of all other secs & documts of title wch may at any time hrafter be comprd in or form pt of the sd trust ppty (*b*).

2. *Add such convce by* "A. & B. as trees" *to the Public Trustee as may be appropriate.*

In witness, &c.

The Schdle above referred to.

(*b*) It is conceived that if the Public Trustee should desire to retire from being custodian trustee before all the trusts are performed he must apply to the Court for an order for that purpose under s. 4 (2) (i) of the Act of 1906.

APPRENTICESHIP.

PRELIMINARY NOTE.

For the law as to apprenticeship, see Simpson on Infants; Austin on Apprentices; Myer on Apprenticeship Law; and the Acts in the Index to the Statutes under "Apprentice." There are of course special forms applicable to particular cases, *e.g.*, under the Merchant Shipping Act, 1894, ss. 105 *et seq.*; see Temperley's Merchant Shipping Acts, 3rd ed., pp. 69. *et seq.*

A contract of apprenticeship was by the statute 5 Eliz. c. 4, required to be by deed and for a period of seven years at the least. The latter requirement was repealed by the Statute 54 Geo. 3, c. 96, which also provided that indentures, deeds and agreements in writing which would be otherwise valid and effectual shall be valid and effectual in law. Except, therefore, where some statute may have otherwise provided in any particular case (per Lord Alverstone in *Kirby* v. *Taylor*, [1910] 1 K. B. at p. 534) a contract of apprenticeship to be enforceable at law must be in writing and may be either under hand or seal, the latter being generally desirable.

In framing apprenticeship deeds, the following points should be borne in mind:—

No action can be brought against the apprentice while he is apprentice upon the covenants in the deed: *Gylbert* v. *Fletcher*, Cro. Car. 179; *Gadd* v. *Thompson*, [1911] 1 K. B. 304; but an infant may bind himself to pay at a future date (either during the currency or after the expiration of the apprenticeship) a premium as the price of instruction which is fair and reasonable, and therefore in the nature of necessaries supplied to him: *Walter* v. *Everard*, [1891] 2 Q. B. 369; *Gadd* v. *Thompson*, [1911] 1 K. B. 304.

Similarly, an infant may bind himself to do or to refrain from doing some act which the master may be willing to accept as deferred consideration for such instruction: as, for instance, to pay commission on salary earned by him during and for a definite time after the period of instruction: *Mackinlay* v. *Bathurst*, 36 T. L. R. 31. If an infant enters into a contract of apprenticeship or service which contains a covenant in restraint of trade, and the contract as a whole is more onerous than beneficial to him, the infant may repudiate it, whether or not apart from the question of infancy, the restraining covenant could be regarded as reasonable; and the onus lies on the employer to prove that the contract as a whole is beneficial to the infant: *Leng & Co.* v. *Andrews*, [1909] 1 Ch. 763: cf. *Evans* v. *Ware*, [1892] 3 Ch. 502. It has been held that if the restraining covenant contains some terms which are reasonable, and others which are unreasonable but severable, the latter may be severed and the operative part of the contract enforced if then, as a whole, it is beneficial to the infant: *Bromley*

v. *Smith*, [1909] 2 K. B. 235 : but as to the present trend of judicial opinion upon the doctrine of severability, see *ante*, p. 42. A restraining covenant cannot in any case be enforced against an infant during infancy, but can, if reasonable, be enforced against him by injunction after majority as regards any breach committed after majority : *De Francesco* v. *Barnum*, 43 Ch. D. 165 : *Gadd* v. *Thompson*, [1911] 1 K. B. 304 ; and the test of reasonableness is the same in a contract of apprenticeship as in the ordinary case of a contract for personal service by an infant ; *De Francesco* v. *Barnum*, 45 Ch. D. at p. 439 ; *Gadd* v. *Thompson*, *sup.* at p. 309.

Where the provisions in an apprenticeship deed are unreasonable, and cannot be enforced against the infant or the infant's parent, A., the infant's master and teacher, cannot maintain an action against a stranger for enticing the infant away from his employment : *De Francesco* v. *Barnum*, 45 Ch. D. 430 ; cf *Long* v. *Smithson*, 88 L. J. K. B. 223 ; and see *Wilkins* v. *Weaver*, [1915] 2 Ch. 322.

As to provisions not for benefit of apprentice.

Where the deed provides for paying wages, a provision stopping the wages during a lock-out or turn-out would be invalid : *Meakin* v. *Morris*, 12 Q. B. D. 352 ; *Corn* v. *Matthews*, [1893] 1 Q. B. 310 ; as also, it is presumed, would be a provision for reducing the wages in the event of the working hours being reduced under the Factory Acts or similar legislation, but a provision stopping wages while the business is at a standstill, owing to accidents beyond the control of the master, is valid : *Green* v. *Thompson*, [1899] 2 Q. B. 1. An infant cannot repudiate a contract of apprenticeship, unless to do so would be for his own benefit : *Waterman* v. *Fryer*, [1922] 1 K. B. 632 ; and will be liable in damages for the breach of a contract for his employment and instruction, which is for his benefit, although at the time of the breach the contract may be partly executory : *Roberts* v. *Gray*, [1913] 1 K. B. 520. See further as to provisions not for the benefit of the apprentice, *Leslie* v. *Fitzpatrick*, 3 Q. B. D. 229.

Medical attendance.

As to the master's liability, in the absence of stipulation, to supply the apprentice with medical attendance, see *R.* v. *Smith*, 8 C. & P. 153.

Death or bankruptcy of master.

In the absence of a provision to that effect, no part of the premium is recoverable on the master's death : *Whincup* v. *Hughes*, L. R. 6 C. P. 78 ; *Ferns* v. *Carr*, 28 Ch. D. 409 ; and see 29 Sol. J. 315. As to the bankruptcy of the master, see the Bankruptcy Act, 1914, s. 34. If the contract of service extends to the master's executors, the deed will at his death be binding as between them and the apprentice : *Cooper* v. *Simmons*, 7 H. & N. 707 ; but subject to the provisions of the deed, the contract of apprenticeship is determined by the death of either party : *Baxter* v. *Burfield*, 2 Stra. 1266.

Covenant for payment of premium.

If the whole of the premium is not paid at the time when the infant is bound apprentice, it is usual for the father or some other relative to covenant for payment of the balance. Otherwise the onus would lie upon the master of proving that (1) the apprenticeship was a provident and proper arrangement, (2) the premium was fair and reasonable, and (3) instruction had been duly given under the deed : see *Walter* v. *Everard*, [1891] 2 Q. B. 369, and cases above cited.

Gross misconduct by apprentice.

As to the effect of gross misconduct of the apprentice, *e.g.*, habitual theft, on the master's covenant to teach and maintain him, see *Learoyd* v. *Brook*, [1891] 1 Q. B. 431 ; *Waterman* v. *Fryer*, [1922] 1 K. B. 632.

Master a corporation.

An apprenticeship to a corporation is good, see *Burnley, &c., Socy.* v. *Casson*, [1891] 1 Q. B. 75.

As to stamps, see the Stamp Act, 1891, First sched. APPRENTICESHIP, and

GENERAL EXEMPTION FROM ALL STAMP DUTIES, and the Merchant Shipping Act, 1894, s. 108. Stamps

As to the difference between a contract of ordinary service and an apprenticeship, see *De Francesco* v. *Barnum*, 43 Ch. D. at p. 174; *James* v. *Krauth*, 26 T. L. R. 240; and, as to contracts of service by infants, see *Clements* v. *L. & N. W. Rly. Co.*, [1894] 2 Q. B. 482; *Roberts* v. *Gray*, [1913] 1 K. B. 520.

I.

APPRENTICESHIP DEED.

THIS APPRENTICESHIP DEED, made, &c., BETN A., of, &c., *master*, of the first pt; B., *apprentice*, son of C., &c., of the second pt; & the sd C., of the third pt, WITNESSETH, that in conson of the sum of £—— now pd by the sd C. to the sd A., the rect whrof he hby acknowes & in conson also of the service of the sd B. to be done or pformed to or for the sd A., & of the covts & agrmts hrinar entered into by the sd C. & B., he, the sd A., at the reqt of the sd C., & with the consent (hby testified) of the sd B., hby covts & agrees with the sd C., & also with the sd B., in mner followg, that is to say, that he, the sd A., will take & receive the sd B. as his apprentice from the day of the date of these psnts for the term of —— yrs, & also will durg the sd term, to the best of his power, knowledge & ability, instruct the sd B. in the trade or business of ——, & in all things incident or relatg thto, in such mner as he, the sd A., doth now or shl hrafter durg the sd term use or practise the same [AND WILL durg the sd term find & provide the sd B. with good & sufft board & lodging in the house of the sd A., *or* "AND WILL pay to the sd B. durg the sd term or until the sooner determinon of the sd apprenticeship, the respective sums followg, in lieu of providg him with board & lodging (that is to say), the sum of £—— for the first yr of the sd term, the sum of £—— for the second yr throf, &c., payable [quarterly] on the —— day of ——, &c., with a proportionate pt throf up to the day on wch the sd apprenticeship shl terminate"]: AND FURTHER that the sd A. shl not require the sd B. to attend to the business or affairs of the sd A., for a longer period than —— hours in each day, unless the sd B. shl unavoidably be longer engaged by an extreme & unusual pressure of

Parties.

Covenant by master,

to receive apprentice,

instruct,

to provide board and lodging

or, pay allowance in lieu thereof.

Business hours.

Apprentice bound.

business: And in conson of the covts & agrmts hrinbfe contd on the pt of the sd A., the sd C. hby places & binds the sd B., & the sd B., with the consent of the sd C., hby places & binds himself with & to the sd A. durg the term afsd, durg all wch time the sd B. shl faithfully, honestly, & diligently serve him (*a*), the sd A., & obey & pform all his lawful & reasble commands & requiremts. & shl not do any damage or injury to the sd A. or knowingly suffer the same to be done witht acquaintg him thrwith, but shl in all things conduct & acquit himself as an honest & faithful apprentice ought to do: And for the consons afsd, the sd C. hby covts & agrees with the sd A., that the sd B. shl faithfully, honestly & diligently serve the sd A. as his apprentice durg the term afsd: And also that he, the sd C., his exs or ads, will at his or their own expse, find & provide the sd B. with good & sufft [board, lodging,] clothg, washg, pocket-moy, medicine & medical & surgical attendce (*b*), & all other necessaries, [except board & lodging as afsd] durg the sd term [& will also pay the expses of the funl of the sd B. in the case of his death durg the sd term] (*c*) [& further that the sd B. shl if reqd by the sd A. attend such lectures & classes as the sd A. shl direct, & that the sd C. shl pay all fees payable for such lectures and classes, & the expses of the sd B. in attendg them]: [Provd always & it is hby agrd that the sd C. shl on demand pay to the sd A. the excess (if any) over the sum of £—— pd by him in any one yr in respt of such

Covenant by father that son shall serve, to provide necessaries.

(*a*) As to what constitutes a breach of this covenant, see *Richardson* v. *Colne Fishery Co.*, 77 L. T. 501.

(*b*) As to medical attendance, see *ante*, p. 162.

(*c*) The following provision for a change in the locality of the business seems free from the objection in *Eaton* v. *Western*, 9 Q. B. D. 636 (overruling *Royce* v. *Charlton*, 8 Q. B. D. 1):—

Provision for removal of business.

"Provd always that in case at any time & so long as the sd A. shl require the sd B. to serve his apprenticeship at any place more than —— miles distant from —— afsd (wch he shl be at liberty to do provd the distce does not exceed —— miles thfrom) then the sd A. shl find pper & sufft board & lodging for the sd B. in the house of him the sd A. or elsewhere, & the sd C., his exs or ads, shl pay to the sd A. the sum of £—— per week towards the expses thof."

As to the case of the employers being a firm which becomes split into two, see *Eaton* v. *Western*, *sup.*

medicine & medical & surgical attendance as afsd] : [PROVD ALWAYS & it is hby agrd that in case the sd B. shl die within —— calr months from the day of the date hrof, [or in case the health of the sd B. shl within that time fail, so as to incapacitate him from followg the trade or business of ——, & such failure of health shl be certified by two duly qualified medical practitioners (*d*)], the sd A. shl repay to the sd C. the sum of £——, pt of the sd premium or sum of £—— so pd to the sd A. as afsd, & in case such death [or failure of health certified as afsd] shl happen after such —— calr months, but within —— yrs from the date hrof, then the sd A. shl repay the sum of £——, pt of the sd premium] : [PROVD ALSO, & it is hby further agrd, that in case the sd A. shl die bfe the expiron of the sd apprenticeship, then the exs or ads of him, the sd A., shl as soon as may be after his death find & provide for the sd B. anor pper & suitable master followg the trade or business of ——, & at their own cost assn over & bind the sd B. to such new master for such residue as shl be then unexpired of the term of his sd apprenticeship upon the same terms or upon terms equally advantageous to the sd B. as are contd in these psnts, & in default throf shl pay to the sd C. the sum of £—— for every yr & a proportionate sum for any fraction of a yr of the sd term of —— yrs wch shl at the death of the sd A. be unexpired] : [PROVD ALSO, & it is hby further agrd, that the sd A. shl permit the sd B., if he shl require the same in writg, to leave the service of him, the sd A., at the expiron of the first —— yrs, or at any time thrafter, & to employ the remr of the sd term for his own use & benefit witht any interference or claim on the pt of the sd A. in or for any gains or earngs thrafter made by the sd B. in the afsd trade or business or orwise] : [PROVD ALSO, and it is hby further agrd, that in case the sd B. shl at any time durg the sd term be wilfully disobedient to the lawful & reasble commands of the sd A., or shl orwise grossly misconduct himself, it shl be lawful for the sd A. to discharge the sd B. from his service, provd that in such case he shl repay the sd C. the sum of £—— for every yr & a proportionate sum for any

Proviso in case of son's death, &c.

Proviso in case of master's death (*e*).

Power for son to leave service after —— years.

Dismissal on misconduct (*a*).

(*d*) See *Derby* v. *Humber*, L. R., 2 C. P. 247. (*e*) See *ante*, p. 162.

(*a*) See *Westwick* v. *Theodor*, L. R., 10 Q. B. 224; *James* v. *Krauth*, 26 T. L. R. 240.

fraction of a yr of the sd term of —— yrs wch shl then be unexpired]: [And it is hby agrd that upon the expiron of the sd apprenticeship & the discharge by the sd B. & C. of all their respective obligons to the sd A. hrunder this psnt indre shl be delivered by the sd A. to the sd B.] In witness, &c. (*b*).

II.

ARTICLES *of* Clerkship *to a* Solicitor (*c*), *the* Clerk *being* Of Age. Variation *where he is* Under Age *and his* Father *joins* (*d*).

ARTICLES of Agrmt made this —— day of ——, 19—.

Parties. Betn [A., of, &c., *father of the clerk*, of the first pt,] B., of, &c., *clerk*, of the one [second pt, & C., of, &c., *solor*, of the other

Recital. [third] pt: Whas the sd B. [A.] has applied to the sd C. to accept [his son] the sd B. as an articled clerk, wch the sd C. has agrd to do in mner & on the terms hrinar appearg: NOW THESE PSNTS WITNESS that, in psuance of the sd

Clerk articled. agrmt the sd B. [of his own free will & with the consent of his

(*b*) Stamp 2*s.* 6*d.*

As to articles of clerkship to solicitor. (*c*) As to articles of clerkship to a solicitor see 6 & 7 Vict. c. 73, ss. 4, 5, 13; 40 & 41 Vict. c. 25, s. 23, sched. 2; 51 & 52 Vict. c. 65. As to the period of service see 6 & 7 Vict. c. 73, ss. 3, 6; 23 & 24 Vict. c. 127, ss. 2–6, 15, 32; 35 & 36 Vict. c. 81; the Solicitors Act, 1877, ss. 12–14; and the order under s. 13 of the last cited Act: [1913] W. N., pt. 2, p. 35; the Solicitors (Articled Clerks) Acts, 1918 and 1919 (limited to persons entering into articles before September, 1922); and the Solicitors Act, 1922. As to Ireland, see the Solicitors (Ireland) Act, 1898. As to the regulations under the Solicitors Act, 1877, see 22 Sol. J. 171. As to registration, see the Solicitors Act, 1888, ss. 7–9. As to the enrolment of the articles *nunc pro tunc*, see *Ex p. Darville*, L. R., 2 C. P. 244; *Re Sayer*, L. R. 10 C. P. 569; *Ex p. Banyard*, L. R., 10 C. P. 638.

Assigning articles of clerkship. It is now settled that the practice of assigning articles of clerkship is erroneous. The proper course is by mutual agreement to cancel the original articles and to enter into fresh articles, which require a stamp of 10*s.*; see *Ex p. Adams*, 4 Ch. D. 39; 21 Sol. J. 357, 585.

Bankruptcy or death of solicitor. As to the bankruptcy of the solicitor, see Bankruptcy Act, 1914, s. 34. In the absence of express contract the clerk has no right to a return of the premium on the death of the solicitor, see *Ferns* v. *Carr*, 28 Ch. D. 409.

A covenant by an articled clerk of a London solicitor not to transact business with his clients extends to country solicitors for whom he is agent. *Reid* v. *Burrows*, [1892] 2 Ch. 413.

(*d*) See also the form recommended by the Incorporated Law Society of Liverpool in 35 Sol. J. 805, and by the Yorkshire Board of Studies in 47 Sol. J. 817. As to London, the Law Society do not recommend any particular form of articles; and it seems probable that this Precedent will meet the ordinary cases that may arise.

father, the sd A.] hby places & binds himself clerk to the sd C., to serve him from the day of the date hrof for the term of *five* yrs: AND THE SD B. [A.] hby [for himself & also on behalf of his sd son B.] covts with the sd C. his exs & ads, in mner followg, that is to say, that he, the sd B., shl & will faithfully & diligently serve the sd C. as his clerk in the profession of a solor of the Supreme Ct, from the day of the date hrof durg the sd term of *five* yrs, & that he, the sd B., shl not at any time cancel, injure, obliterate, destroy, spoil, waste, embezzle, spend, or make away with any of the books, papers, writgs, moys, stamps, or other ppty of the sd C., or of the firm in wch he is or may for the time being be a ptner, or of any ptner thrin, or of any of his or their clients or employers, wch shl be deposited in his or their hands, or entrusted to the care, custody, or posson of him or them or of the sd B., AND THAT in case he, the sd B., shl act contrary to the covt lastly hrinbfe contd, or if the sd C., his exs or ads, or his firm for the time being, or any ptner thrin for the time being, shl sustain or suffer any loss, damage, or prejudice, by the misbehaviour, neglect, or improper conduct of the sd B., he, the sd B. [A.], his exs or ads, shl make good & reimburse such loss to the sd C., his exs or ads, or such firm or ptner as afsd, as the case may be, or refund the amt or value throf: AND FURTHER, that he, the sd B., shl & will at all times keep the secrets of the sd C., & of such firm as afsd & of every ptner thrin, & of his or their business, & shl & will at all times durg the sd term of *five* yrs, readily & cheerfully obey & exte his or their lawful & reasble commands, & shl not desert or absent himself from the service or employmt of the sd C. at any time durg the sd term witht his consent, or that of some member of the firm of wch he may for the time being be a member, first obtained, & shl, from time to time, & at all times durg the sd term, conduct himself with all due diligce, honesty, sobriety, & temperce, & that he, the sd B., will truly & honestly serve him, the sd C., at all times durg the sd term as a faithful clerk ought to do in all things whatsr in the mner above specified & in parlar that the sd B. will attend a course of legal education at a law school provided or approved by the Incorporated Law Socy for such period or periods, amounting in the aggregate to a period of not less than one year, as

Covenant for service.

Not to injure property.

Make good any loss.

Keep secrets.

Obey orders.

Not absent himself.

To attend a course of legal education.

the sd C. shall from time to time prescribe, & will at all times conduct himself with due diligence & propriety, & will present himself & use his best endeavours to pass the examinations prescribed by law when he shl be eligible to present himself thereat: (*a*) IN CONSON whrof & of the sum of £—— by the sd B. [A.] to the sd C. now pd (the rect whrof the sd C. hby acknowes), he, the sd C., hby covts with the sd B. [A.], his exs & ads, in mner followg, that is to say, that he, the sd C., will accept the sd B. as his clerk, & also will teach & instruct, or cause to be taught & instructed, the sd B. in the practice & profession of a solor of the Supreme Ct wch he the sd C., now doth or shl at any time hrafter durg the sd term use or practise, & also will at the expiron of the sd term use his best means & endeavours at the request, costs, & charges of the sd B., to cause & procure him the sd B., to be admitted & sworn a solor of the Supreme Ct, provd that he, the sd B., shl have well & faithfully served his sd intd clerkship, & shl have successfully passed all such examinons as articled clerks are by law or custom bound to do bfe being admitted to practise as solors (*b*). [AND FURTHER that in case he, the sd C., shl retire from practice or die bfe the expiron of the sd term of *five* yrs, the sd C., his exs or ads, shl within one month after his retiremt or death pay or cause to be pd to such pson or psons as shl agree to accept the sd B. as his or their clerk for the residue of the sd term, the sums of moy followg, that is to say, in case such retiremt or death shl happen before the expiron of the first yr of the sd term, the sum of £——, & in case the same shl happen after the first yr

Covenant by solicitor

to accept clerk, teach,

cause clerk to be admitted.

Proviso for death of solicitor (*c*).

(*a*) A covenant may be added restraining the clerk from soliciting the solicitor's clients after determination of his employment: see *Reid* v. *Burrows*, [1892] 2 Ch. 413; *Cattle* v. *Thorpe*, [1900] W. N. 83. Such a covenant must not be wider than reasonably necessary for the protection of the solicitor's business: see *Lewis* v. *Durnford*, 24 T. L. R. 64, and cases cited *ante*, p. 43.

(*b*) In case the fees expended for the law lectures are to be repaid by A. to B., the following may be used, "Provd always that the sd A. shl on the —— day of —— in every yr durg the sd term or within —— days thrafter pay to the sd B. all sums wch the sd B. may have expended durg the precedg twelve calr months on acct of the fees payable in respt of such law lectures & courses as afsd."

(*c*) See 6 & 7 Vict. c. 73, s. 13: *Ex p. Williamson*, 4 Ch. D. 581.

& bfe the expiron of the second yr throf, the sum of £——, &c.]
In witness, &c. (*d*).

III.

AGREEMENT *enabling an* Apprentice *to* Transfer *or* Determine *his* Apprenticeship.

Parties. AN AGRMT made, &c., Betn A., of, &c., *master*, of the one pt, & B., of, &c., *apprentice*, of the other pt: Whas by an indre [an apprenticeship deed (*e*)], dated, &c., & made, &c., the sd B. bound himself apprentice to the sd A., to learn his business of ——, from the day of the date throf for the term of *seven* yrs: And whas it has been agrd that the sd B. shl have power to require an assnmt of, or to determine the sd service & apprenticeship as hrinar mentd: NOW THESE PSNTS WITNESS that, in psuance of the sd agrmt it is hby agrd, & parlarly the sd A. hby covts with the sd B., that in case the sd B., shl at any time hrafter, durg the sd term of *seven* yrs, be desirous of servg the remr of the sd term, or of learng the sd business of ——, with some pson other than the sd A., who shl be a resident in England, & shl give notice in writg of such his desire to the sd A., then the sd A. shl & will on the rect of such notice, at the cost of the sd B., assn & transfer unto such pson being a resident in England, as the sd B. shl, by any such notice as afsd, nominate for that ppose, all the residue wch shl be then to come of the sd term of *seven* yrs, & all right & title to the service of the sd B., durg such residue of the same term: And also that in case the sd B. shl at any time hrafter durg the sd term of *seven* yrs be desirous of determing the apprenticeship or service by the sd recited indre contracted to be served or pformed, & give notice in writg of such desire as last afsd to the sd A., then & in that case immedly after any such notice as last afsd shl have been given, the sd indre of, &c., & the apprenticeship & service thby contracted to be served & pformed, & every covt, agrmt, & thing thrin expd or contd shl cease & become void, but witht prejudice to any right of action wch may have arisen in respt of any breach thtofore committed of any of such covts or agrmts. In witness, &c.

Recital of apprenticeship.

Agreement to give power.

Covenant by master

on notice

to assign,

to determine.

(*d*) These Articles must be stamped before execution. Stamp £80. See Stamp Act, 1891, "Articles of Clerkship," and ss. 26 and 27.

(*e*) As to the proper mode of describing recited documents, see *ante*, p. 166.

ARBITRATION.

PRELIMINARY NOTE.

Arbitration Act, 1889.

The earlier enactments relating to arbitration have been superseded by the Arbitration Act, 1889. By this Act (which relates to England only) it is provided (s. 1) that every submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a Judge, and shall have the same effect as if made an order of Court. It is therefore now unnecessary to provide, as it was before the Act, for making the submission or award a rule of Court. As to the law before the Act with respect to the submission being revocable, see the third edition of this work, Vol. I., p. 166, note: *Fraser* v. *Ehrensperger*, 12 Q. B. D. 310, where a form of revocation will be found, and *Tabernacle Permanent Building Society* v. *Knight*, [1892] A. C. 298, at p. 301. And see as to s. 1 of the Act and the jurisdiction to enforce submissions, *Re Smith & Service*, 25 Q. B. D. 545.

Submission irrevocable.

Provisions implied in submission.

By s. 2 (which applies to all submissions, whether made before or after the Act, *Re Williams & Stepney*, [1891] 2 Q. B. 257), it is enacted that a submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set out in the 1st schedule to the Act, so far as they are applicable to the reference under the submission, namely :—

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.

Number of arbitrators.

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Time for making award.

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act (explained, *Baring Gould* v. *Sharpington, &c., Syndicate*, [1899] 2 Ch. 80) by notice in writing from any party to the submission ; or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

d. If the arbitrators have allowed their time or extended time to expire without making any award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

Examination of parties and pro-

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters

in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require: see *Re Crighton & Law Car, &c., Corpn.*, [1910] 2 K. B. 738; *Kursell* v. *Timber Operators & Contractors, Ltd.*, [1923] 2 K. B. 202. duction of documents.

g. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively. Award final.

i. The cost of the reference and award shall be in the direction of the arbitrators or umpire, who may direct to and by whom and in what manner such costs or any part thereof shall be paid, (*Ashburton* v. *Gray*, [1916] 1 K. B. 452, 458: affirmed [1917] A. C. 26), and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client. This empowers the arbitrators to settle the amount of the costs, including their own fees, so as not to be subject to taxation; *Re Stephens*, 36 Sol. J. 464; *Re Prebble*, [1982] 2 Q. B. 602; *Re Stanley & Nuneaton Corpn.*, 59 Sol. J. 104; unless, of course, the question of costs is by the agreement excluded from the reference: *Fitzsimmons* v. *Mostyn*, [1904] A. C. 46. An award which does not deal with the costs of reference will be remitted: *Re Becker, Shillan & Co. & Barry*, [1921] 1 K. B. 391. In a submission by agreement out of Court, the arbitrator cannot order parties to give security for costs, in the absence of express provision in the agreement: *Lanza and Wiener*, [1917] 2 K. B. 558. Costs.

Section 3 provides for the case of the reference being made to an official referee. Section 4 confers upon any Court, including a County Court (*Morriston Tinplate Co.* v. *Brooker & Co.*, [1908] 1 K. B. 403) or a Judge thereof, power to stay legal proceedings by one party to a submission against the other party upon the application of the latter at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings; *County Theatres, &c.* v. *Knowles*, [1902] 1 K. B. 480; *Richardson* v. *Le Maitre*, [1903] 2 Ch. 222; *Ochs* v. *Ochs Brothers*, [1909] 2 Ch. 121; *Cohen* v. *Arthur*, 56 Sol. J. 344; *Doleman & Sons* v. *Ossett Corpn.*, [1912[3 K. B. 257; *Austin* v. *Bowley & Son*, 108 L. T. 921; *Parker, Gaines & Co.* v. *Turpin*, [1918] 1 K. B. 358; and the decision of a judge, who has exercised his discretion under this section judicially, will not be overruled: *Clough* v. *County, etc., Assocn.*, 85 L. J. K. B. 1185. As to stay of proceedings in a petition of right, see *Anglo-Newfoundland, etc., Co.* v. *The King*, [1920] 2 K. B. 214. Under this section the practice of the Court is not to stay proceedings where the question for decision is one more suitable for the Court than the arbitrator, *Barnes* v. *Youngs*, [1898] 1 Ch. 414, or where the principal or immediate question involved is one of law, *Re Carlisle*, 44 Ch. D. 200; *Bonnin* v. *Neame*, [1910] 1 Ch. 732; *Rowe* v. *Crossley*, 57 Sol. J. 144, *Clough* v. *County, etc., Assocn., supra*; *Hogg* v. *Belfast Corpn.*, [1919] 2 Ir. R. 305; *Anglo-Newfoundland, etc., Co.* v. *The King, supra*; or where the action is to set aside the contract in its entirety: *Monro* v. *Bognor U. C.*, [1915] 3 K. B. 167, or in any case where it is not satisfied that there is no sufficient reason why the matter should not be referred: *Freeman & Sons* v. *Chester R. D. C.*, [1911] 1 K. B. 783; *Lock* v. *Army, etc., Assocn.*, 31 T. L. R. 297; and cf. *Printing,* Legal proceedings.

&c., Co. v. *Linotype, &c., Ltd.*, [1912] 1 Ch. 566, and *Bristol Corpn.* v. *Aird & Co.*, [1913] A. C. 241, where a sufficient reason was found. In an action for wrongful dismissal under a contract containing an arbitration clause, a reference to arbitration is enforceable under this section: *Renshaw* v. *Queen Anne, &c., Co.*, [1897] 1 Q. B. 662, and see *Parry* v. *Liverpool Malt Co.*, [1900] 1 Q. B. 339.

Power of Court to appoint arbitrators.

Section 5 enacts that in any of the following cases—(*a*) where a submission provides that the reference shall be to a single arbitrator and all the parties do not after differences have arisen concur in the appointment of an arbitrator; (*b*) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy; (*c*) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; (*d*) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy, or there is no machinery in the agreement for appointing a new arbitrator: *Re Wilson & Eastern Counties, &c., Co.*, [1892] 1 Q. B. 81:—any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator: and if the appointment is not made within seven clear days after service of the notice, power is given to the Court or a judge, on the application of the party who gave the notice, to make the appointment: see *Re Eyre & Leicester Corpn.*, [1892] 1 Q. B. 136; *Taylor* v. *Denny, &c.*, [1912] A. C. 666; *Re Bjornstad and The Ouse Shipping Co.*, [1924] 2 K. B. 637.

Provision for arbitrator of one party acting alone.

By s. 6 where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention, (*a*) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place; or (*b*) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent. But the Court or a judge may set aside any appointment made in pursuance of this section.

Where there is an agreement to appoint three arbitrators, one by each of the parties, and the third by the two so appointed, ss. 4, 5, and 6 do not apply so as to enable the Court to order one of the parties to appoint an arbitrator; *Re Smith & Service*, 25 Q. B. D. 545; but where under such an agreement one of the parties refuses to appoint an arbitrator, and brings an action against the other party, s. 4 applies so as to enable the Court to stay the action: *Manchester Ship Canal Co.* v. *Pearson*, [1900] 2 Q. B. 606.

Powers of arbitrators.

Section 7 provides that the arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power (*a*) to administer oaths to or take the affirmations of the parties and witnesses appearing; (*b*) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and (*c*) to correct in an award any clerical mistake or error arising from any accidental slip or omission,

but not to make an amended award expounding the former award: *Sutherland* v. *Hannevig*, [1921] 1 K. B. 336. An award may be made in an alternative form as a special case under s. 7 (*b*) provided that certain conditions are complied with, and with an alternative final award: *Re Olympia, etc., Co., & MacAndrew*, [1918] 2 K. B. 771.

Where, in commercial cases, the arbitrators have differed, either arbitrator is entitled to give evidence before the umpire: *Bourgeois* v. *Weddell & Co.*, [1924] 1 K. B. 539.

"Submission" is defined (s. 27) as a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not: see *Austrian-Lloyd Steamship Co.* v. *Gresham, &c., Socy.*, [1903] 1 K. B. 249, and *cf*, *Hodson* v. *Railway, &c., Co.*, [1904] 2 K. B. 833; *Clements* v. *County, &c., Committee*, [1918] 1 K. B. 94; *Anglo-Newfoundland, &c., Co.* v. *The King*, [1920] 2 K. B. 214. The articles of association of a registered company may constitute a submission in writing between the company and its members: *Hickman* v. *Kent, &c., Assocn.*, [1915] 1 Ch. 881.

Sections 8—12 confer certain ancillary powers, *e.g.*, to any party to a submission to summon witnesses by subpœna; to the Court or a judge to enlarge the time for making an award, and to remit an award for reconsideration; and to the Court to set aside an award or remove an arbitrator or umpire in case of misconduct; *Re Palmer & Hosken*, [1898] 1 Q. B. 131; *Re Enoch*, [1910] 1 K. B. 327; *Walford* v. *Macfie*, 84 L. J. K. B. 2221: *Roff* v. *British, &c., Co.*, [1918] 2 K. B. 677; *Sellar* v. *Highland R.*, [1919] S. C. 19; *Ramsden* v. *Jacobs*, [1922] 1 K. B. 640; cf. *French Govmt.* v. "*Tsurushima Maru*" (*Owners*), 37 T. L. R. 961. As to when the Court will grant leave under s. 12 to enforce an award in a summary manner, see *Re Boks & Co. & Peters*, [1919] 1 K. B. 491. As to possible bias owing to the position of the arbitrator, see *ante*, p. 12, note (*f*).

Sections 13—17 deal with references under order of Court; see *Re M. W. P. Act*, 1882, (1917] 2 K. B. 72; and the remainder of the Act consists of general provisions as to the working of the Act.

Under s. 19 the arbitrator may and shall if so directed by the Court state a special case for the opinion of the Court, though he has expressed no opinion on the matter referred to him: *Re Spillers & Baker, Ltd.*, [1897] 1 Q. B. 312; and see *Lobitos Oilfields* v. *Admiralty Commrs.*, 86 L. J. K. B. 1444; and although by the terms of the submission it is provided that neither party shall apply for a special case: *Czarnikow* v. *Roth Schmidt & Co.*, [1922], 2 K. B. 478. He ought to state a special case at the request of either party; *Re Palmer & Hosken*, [1898] 1 Q. B. 131; *Re Fischel & Co. & Mann*, [1919] 2 K. B. 431; *Czarnikow* v. *Roth*, 38 T. L. R. 595; but cf. *Buerger* v. *Barnett*, 89 L. J. K. B. 161. There is no appeal from the opinion of the Court thus obtained; *Cogstad* v. *Newsum*, [1921] 2 A. C. 528; or from the opinion of counsel who is substituted for the Court under the section: *Re Wulff & Dreyfus*, 86 L. J. K. B. 1368; but a mistake of law appearing, as the result of such opinion, on the face of the award, is subject to review in a superior Court; *British Westinghouse, &c., Co.* v. *Underground, &c., Co.*, [1912] A. C. 673. The principle is well settled that a mistake of law appearing on the face of an award makes the award bad: *Kelantan Government* v. *Duff Development Co.*, [1923] A. C. 395; but in order to bring a case within this principle there must be found in the award or a document actually incorporated therewith, as for instance a note appended by the arbitrator stating the reasons for his decision, some legal proposition which is the basis of the award and is erroneous: *Champsey*

Bhara & Co. v. *Jivraj Balloo Spinning, &c., Co.*, [1923] A .C. 480. There is no error on the face of the award merely because the decision is erroneous and, consequently, an award by an arbitrator on a question of law specifically referred to him is binding although erroneous: *Re King & Duveen*, [1913] 2 K. B. 32; *Re Wulff & Dreyfus, supra*; cf. *Re Parsons & Brixham, &c., Socy.*, 118 L. T. 600; and his decision as to the existence of a custom affecting the rights of the parties to the contract, and not excluded therefrom, is final: *Produce Brokers Co.* v. *Olympia, &c., Co.*, [1916] 1 A. C. 314.

By s. 25 the Act is made to apply to an arbitration commenced after the Act under an agreement or order made before the commencement of the Act; see per Lord Esher, M.R., in *Re Williams*, [1891] 2 Q. B. 259.

The Court has no power to set aside or remit an award made under a submission by consent of the parties: *Darlington, &c., Co.* v. *Harding*, [1891] 1 Q. B. 245.

As to arbitrations under the Public Health Act, 1875, see *Re Stoker & Morpeth Corpn.*, [1915] 2 K. B. 511; *Thomas* v. *Hendon R. C.*, 9 L. G. R. 234; under the London Building Act, 1894, see *Re Stone & Hastie*, [1903] 2 K. B. 463; *Leadbetter* v. *Marylebone B. C.*, [1904] 2 K. B. 893; *Adams* v. *Marylebone B. C.*, [1907] 2 K. B. 822; *Selby* v. *Whitbread*, [1917] 1 K. B. 736; and under the Housing, &c., Act, 1890, see *Re Harvey & L. C. C.*, [1909] 1 Ch. 528; *L. C. C.* v. *Wilson's Exors.*, [1916] 1 K. B. 837; and as to arbitrations in the case of agricultural holdings, see the Agricultural Holdings Act, 1923, ss. 16–19, Second Schedule; and the following cases decided under the repealed Act of 1908, viz.: *Williams* v. *Wallis & Cox*, [1914] 2 K. B. 478; *Gray* v. *Lord Ashburton*, [1917] A. C. 26; *Cowdray* v. *Ferries*, [1919] S. C. 27; *Re O'Conor & Whitlaw*, 88 L. J. K. B. 1242; and *post, sub tit.* "LEASES" (AGRICULTURAL); and in the case of small holdings, see Small Holdings, &c., Act, 1908, s. 58.

Agricultural holdings.

Special provisions as to arbitration are contained in many Acts relating to companies and public bodies, which must be conformed to where they apply; see the special Acts enumerated in the index to the statutes under ARBITRATION. As to the application of the provisions of the Act of 1889 to arbitration under special Acts, see s. 24, *Tabernacle, &c., Society* v. *Knight*, [1892] A. C. 298; *Sidney* v. *N. E. R.*, [1916] 2 K. B. 760.

Companies and public bodies.

As to the difference between a mere appraisement by valuers and an arbitration, see *Collins* v. *Collins*, 26 Beav. 306: *Re Dawdy*, 15 Q. B. D. 426; *Re Carus-Wilson*, 18 Q. B. D. 7; *Re Hammond & Waterton*, 62 L. T. 808; *Taylor* v. *Yielding*, 56 Sol. J. 253, Dart, 7th ed., 244; 46 Sol. J. 210; and see *Stewart* v. *Williamson*, [1910] A. C. 455.

Appraisement.

See further on this subject Russell on Arbitration.

As to the power of executors and trustees to refer to arbitration, see the T. Act, 1925, s. 15.

As to Scotland, see 57 & 58 Vict. c. 13.

CLAUSES *as to referring* DISPUTES *to* ARBITRATION (*a*).

For reference of future

1. If at any time hrafter any dispute, diffce, or question shl arise betn the sd pties hto, or their respive representatives, or

As to forms in text.

(*a*) This and the three following forms of clauses for reference of future disputes are intended for insertion in deeds or agreements not under seal,

assns (*b*) or any of them, touchg the constron, meang, or effect of these psnts, or any clause or thing hrin contd, or the rights or liabilities of the sd pties resply or their respective representatives, or assns, or any of them, under these psnts, or orwise howsr in relon to the premes, then every such dispute, diffce, or question shl be referred to the arbitron of two indifferent psons, one to be appted by each pty to the reference, or an umpire to be appted by the arbitrors in writg [bfe enterg on the business of the reference]: AND IF either pty shl refuse or neglect to appt an arbitror within *twenty-one* days after the other pty shl have appted an arbitror, & shl have served a written notice upon the first mentd party requirg such party to make such apptmt, then the arbitror appted as afsd shl, at the reqt of the party apptg him, proceed to hear & determine the matters in diffce as if he were an arbitror appted by both pties for that ppose: AND THE award or determinon wch shl be made by the sd arbitrors, arbitror, or umpire, shl be final & bindg upon the sd pties hto resply, & their respective representatives, & assns, so as such arbitrors or arbitror shl make their or his award in writg within *forty* days next after the reference to them or him, or on or bfe any later day to wch the sd arbitrors or arbitror, by any writg signed by them or him, shl enlarge the time for makg their or his award, & so as such umpire shl make his award or determinon in writg within *twenty* days next after the origl or extended time appted for makg the award of the sd arbitrors or arbitror shl have expired, or on or bfe any later day to wch the umpire shl, by any writg signed by him, enlarge the time

disputes to two arbitrators or an umpire. Full form.

One arbitrator to proceed if second not appointed.

Award to be final.

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and may be used, with the verbal alterations indicated, where there are more than two parties, and also, with little if any alteration, where a company or corporation is a party. In the case of a contract to be performed in England the full form No. **1** (which was at one time in use) is now entirely superseded by the statutory provisions (see above), and the short forms **2**, **3**, and **4**, are usually sufficient and effectual; but where the deed may have to be performed or sued upon abroad, it may be proper to insert the full form or some modification of it.

(*b*) The word "assigns" will not always be appropriate. Cf. the form given in Vol. 2, p. 379, Articles of PARTNERSHIP. For an instance where "assigns" not having been mentioned in the submission, a party to the submission was held not to be entitled under s. 4 of the Arbitration Act, 1889, to a stay of proceedings commenced by an assign: see *Bonnin* v. *Neame*, [1910], 1 Ch. 732. In cases relating to real estate, say "successors in title or assns."

No legal proceedings to be taken.

for makg his award : And also that no action or legal proceedings shl be commced or prosecuted by either [any] of the sd pties hto or his representatives or assns, agst the [any] other of them, his representatives or assns, touchg any of the sd matters in diffce, unless the pty to be made deft to such action or proceedings shl have refused or neglected to refer such matters to arbitron, psuant to the provon hrinbfe contd, or unless the time limited for makg such award as afsd shl have expired witht any such award being made (*b*) : And also that the respective pties to such reference, & all psons claimg through them resply (*c*), shl submit to be examined by the sd arbitrors, arbitror, or umpire upon oath or affirmon in relon to the matters in dispute, & shl produce bfe the arbitrors, arbitror, or umpire all books, deeds, papers, accts, writgs, & documts within the posson or power of the sd respective pties wch may be reqd or called for, & do all other things wch durg the proceedings on the sd reference the sd arbitrors, arbitror, or umpire may require : And that the witnesses on the reference shl, if the arbitrors, arbitror, or umpire shl think fit, be examined on oath or affirmon : And that the costs of the reference & award shl be in the discron of the arbitrors, arbitror, or umpire, who may direct to & by whom & in what mner the same or any pt throf shl be pd, & with power to tax or settle the amt of costs to be so pd or any pt throf, & to award costs to be pd as betn solor & client.

Parties to be examined.

Costs.

The same.

Short form (in reliance on the Arbitration Act, 1889).

2. Any & every dispute, diffce, or question wch shl at any time (*a*) arise, &c., *as in Form* **1**, shl be referred to the arbitron of two psons (one to be appted by each pty to the reference) or their umpire (*b*) : And this shl be deemed to be a submission to arbitron within the Arbitron Act, 1889, or any statutory modificon or re-enactmt throf for the time being in force, the provons whrof shl apply as far as applicable.

Reference to

3. Any & every dispute, diffce, or question, wch may at any

(*b*) See *Spurrier* v. *La Cloche*, [1902] A. C. 446.

(*c*) If a company or corporation is a party, this should be extended to their directors, members, secretary, clerks and officers, as the case may be.

(*a*) As to construction of an agreement providing for disputes arising in a particular place, see *The Dawlish*, [1910] P. 339.

(*b*) The words " or their umpire " might be omitted in reliance on the Arbitration Act, 1889, s. 2 ; but it is usual and better to insert them. For a shorter form of reference, see Vol. 2, "Patents," Clauses in.

time arise betn, &c., *as in Form* **1**, shl be referred to the arbitron of three psons, of whom one shl be appted by each party to the reference, & the third shl be appted in writg by the two arbitrors so appted bfe commencg the business of the reference, & the decision of any two of the arbitrors shl be bindg: *Add the provon at* p. 175, *for the event of either party failg to appt an arbitror* (*d*), *mutatis mutandis, substitutg* "arbitrors" *for* "arbitrors, arbitror, or umpire;" *& reference to the statutory provons as in Form* **2**. statutory provisions (*c*). The same. For reference to three arbitrators.

4. Any & every dispute, diffce, or question, wch may at any time arise betn, &c., *as in Form* **1**, shl be referred to the arbitron of A., of, &c., or him failg, of some other competent pson to be named by, *some official pson, e.g., the President of the Institute of* ——, *or of the* —— *Chamber of Commerce, or the Chairman of the General Council of the Bar* (*f*); *or to one of the official referees: add reference to statutory provons as in Form* **2**. The same. For reference to a sole arbitrator (*e*).

(*c*) The express reference to the statute, though unnecessary, is usual.

(*d*) See *Re Smith & Service*, 25 Q. B. D. 545, *ante*, p. 170.

(*e*) As to a reference to a sole arbitrator to be appointed by the parties, see *Re Eyre & Leicester Corporation*, [1892] 1 Q. B. 136. As to a reference to an official referee, see Arbitration Act, 1889, s. 3.

The arbitration clause sometimes provides that the arbitrators to be appointed shall have some special qualification, as, for instance, that they shall be members of a particular trade association. Where this is the case, an award made by persons appointed to act as arbitrators but not having the necessary qualification is null and void: *Jungheim & Co.* v. *Foukelmann*, [1909] 2 K. B. 948. Qualification of arbitrators.

(*f*) See *Re Wilson & Eastern Counties, &c., Co.*, [1892] 1 Q. B. 81.

PRECEDENTS.

I.

AGREEMENT *referring existing specified* DISPUTES *between the Parties to the* ARBITRATION *of one or more persons.* VARIATION *where all other* MATTERS *in difference are referred* (*g*).

Parties. Recital. Agreement to refer. Time for arbitrators to make award.

MEM of AGRMT made the —— day of ——, 19—, BETN A., of, &c., of the one pt, & B., of, &c., of the other pt: WHAS disputes & diffces have arisen & are still subsistg betn the sd A. & B. relative to, *state the specific mres in dispute:* NOW IT IS HBY AGRD that the sd disputes & diffces [& all matters in diffce betn the sd pties wch now exist or may arise at any time bfe the last ten days immedly precedg the day wch shl be appted by the arbitror [or arbitrors] hrinar mentd for the first sittg in the arbitron] shl be referred, & the same are hby referred to the arbitron & determinon of K., of, &c., [*or*, K., of &c., an arbitror nominated by the sd A., & L., of, &c., an arbitror nominated by the sd B., or in case they shl not agree in makg an award, or in determing any matter or matters hby referred to them, then, as regards the matter or matters as to wch there shl be such disagrmt, to the umpirage of M. of &c., *or* " of such pson as the sd arbitrors shl bfe they enter on the business of the reference appt in writg," *or*, " of such pson as the sd arbitrors shl from time to time as soon as conveniently may be after such disagrmt shl arise, appt in writg "]: PROVD that the sd arbitror [arbitrors] make & publish his [their] award in writg signed by him [them] concerng the matters referred, ready to be delivered to the sd pties or either of them, [or, if they or either of them shl be dead bfe the makg of the award, to their or his psonal repves who shl require the same (*a*)] on or bfe the —— day of —— next, or on or bfe

(*g*) Stamp, if under hand only 6*d.*; if under seal 10*s.* The provisions relating to an umpire and to the time for making the award, might generally be omitted in reliance on the Arbitration Act, 1889, s. 2.

(*a*) The words in this bracket are inoperative in a case of tort, see *Bowker* v. *Evans*, 15 Q. B. D. 565.

any subseqt day, not later than the —— day of —— next, to wch the sd arbitror [arbitrors] shl by any writg from time to time enlarge the time for makg the sd award : [AND so as the sd umpire make & publish his award in writg signed by him concerng the matters referred to him, ready to be delivered as afsd, within —— days after the origl or extended time appted for makg the award of the sd arbitrors shl have expired, or on or bfe any subseqt day, not being more than —— days from such last mentd time, to wch the sd umpire shl by any writg signed by him enlarge the time for makg his award] : And this shl be deemed, &c., *continue as at* p. 176, *Form* **2**. IN WITNESS, &c.

Time for umpire to make award.

II.

AGREEMENT *for* REFERENCE *of* SPECIFIED DISPUTES *to* TWO ARBITRATORS *or their* UMPIRE.

PARTIES, A., 1 ; B., 2. WHAS disputes & diffces have arisen & are subsistg betn the sd pties relative to, *here state the specific mres in dispute :* NOW IT IS HBY AGRD that it shl be referred to K., of, &c. (an arbitror appted by the sd A.), & L., of, &c. (an arbitror appted by the sd B.), or their umpire to settle & determine all the matters in dispute & diffce betn the sd pties as afsd : And this shl be deemed, &c., *continue as at* p. 176, *Form* **2**. IN WITNESS, &c.

Agreement.

III.

REFERENCE *of all Matters in* DISPUTE *to* ONE ARBITRATOR. *Short Form without Recitals.*

WE, A., of, &c., & B., of, &c., do hby refer all matters in dispute betn us to the award & determinon of K., of, &c. : And this shl be deemed, &c., *continue as at* p. 176, *Form* **2**. IN WITNESS, &c.

IV.

AGREEMENT *for reference to a* Sole Arbitrator *of a* Claim *against a* Company *in* Liquidation.

Parties. AN AGRMT made the —— day of ——, 19—, Betn A., of, &c., liquidator of the —— Co, Ltd, on behalf of the sd Co

Recitals. of the one pt, & B., of, &c., of the other pt: Whas the sd

Company in liquidation. Co is in course of voluntary windg up & the sd A. has been appted liquidator for the ppose of such windg up: And whas

Claim. the sd B. claims to be a credor of the sd Co, but such claim

Agreement to refer. is disputed: And whas it has been agrd that the sd claim & any other matters in dispute & diffce betn the sd pties shd be

Agreement. referred to arbitron in mner & subjt as hrinar mentd: NOW IT IS HBY AGRD as follows:

Claim to be referred. **1.** It shl be referred to E., of, &c., to determine & award whether any & what sum is due & owg from the sd Co to the sd B., or from the sd B. to the sd Co, & to decide all other matters (if any) in diffce betn the sd pties & also to award

Costs. how & by whom the costs of & incidental to the sd reference & award (includg the costs of this agrmt) are to be borne & pd, & to fix the amt of such costs, provd the award in writg

Time for making award. of the sd E. in the premes be made within —— calr months from the date hrof, or within such extended time as by agrmt of the pties, or by order of the Chancery Divon of the High Ct of Justice, shl from time to time be allowed in that behalf, & the award to be so made by the sd E. shl be final & conclusive.

Agreement to be subject to sanction of general meeting. **2.** This agrmt is condonal on the same being sanctioned by an extraordinary resolon of the sd Co passed psuant to the provons of the Companies C. Act, 1908 (*a*), at a meetg of the Co to be held within one calr month from the date hrof, wch meetg the sd A. hby undertakes to summon accdly, & in the event of this agrmt not being so sanctioned, the same shl be void.

In witness, &c.

(*a*) A company registered under the Companies C. Act, 1908, may, by writing under its seal, in accordance with the Railway Companies Arbitration Act, 1859, refer any existing or future dispute to arbitration; see the Companies C. Act, 1908, s. 119 (1); and see *Hickman* v. *Kent, &c., Assocn.*, [1915] 1 Ch. 881.

V.

AGREEMENT *referring matters in* DISPUTE *in an* ACTION *to the* ARBITRATION *of one or more named* ARBITRATORS *or an* UMPIRE (*b*).

PARTIES, A., 1; B., 2.

WHAS an action is now pendg in the —— Divon of the High Ct of Justice, whrin the sd A. is plt, & the sd B. deft: NOW IT IS HBY AGRD that all proceedings in the sd action shl be stayed, except such proceedings as may be necy to carry out this agrmt for reference, & that in order to ascertain, settle, & adjust all accts, claims, & demands in dispute in the sd action, the same shl be referred & the same are hby referred to the arbitron & determinon of K., of, &c. [*alternative clause, see* p. 178]. IN WITNESS, &c.

Recital.

Agreement to stay proceedings,

and refer.

MISCELLANEOUS CLAUSES *in* AGREEMENTS *to* REFER.

1. ALL the provons of the Arbitron Act, 1889, & of any statutory modificon or re-enactmt throf for the time being in force resptg references to arbitron, wch may be applicable to the case, shl apply to this reference (except so far as the same are hby expressly excluded or varied).

Statutory provisions to be incorporated (*c*).

2. THE sd umpire shl be at liberty to act upon all or any pt of the evidce taken bfe the sd arbitrors as reported by them to him, & to make his award thrupon [unless either of the pties to the reference shl require any witnesses to be reheard or any other evidce to be retaken, or shl tender any fresh evidce, in wch case the sd umpire shl hear or examine such witnesses or evidce].

Evidence taken by arbitrators may be acted on by umpire (*d*).

3. THE umpire may sit & hear evidce in conjunction with the arbitrors, & the award (if any) of such umpire may be based upon such evidce, although at the time when it shl be

Power to umpire to sit with arbitrators.

(*b*) As to the proceedings and practice in case of a reference where an action is pending, see the notes on ARBITRATION in the "Annual Practice."

Action pending.

(*c*) The express reference to the statute, though unnecessary, is usual.

(*d*) In commercial cases the arbitrators may themselves give evidence before the umpire: *Burgeois* v. *Weddell & Co.*, [1924] 1 K. B. 539.

taken the arbitrors may not have differed in opinion on the matters referred to them.

Power to employ accountant.

4. The sd arbitrors or umpire shl be at liberty to appt & employ an acctant to assist them or him, at the expse of the sd pties, who shl be liable to such acctant for his reasble remuneron, And as betn the sd pties the fees of such acctant shl be borne & pd as the sd arbitrors or umpire shl direct, & such acctant may be required to make his solemn declon, accdg to the statute in that behalf, of the truth of the acct or statemt to be made out by him.

Power to cause maps, &c., to be made.

5. The sd arbitrors or umpire shl be at liberty to make or cause to be made maps or plans of the sd lands, houses, & premes, & to measure & survey or value the same, or cause the same to be measured & surveyed or valued, & to employ a surveyor, valuer, or other pson for such ppose at the expse of the sd pties, wch expse shl as betn the sd pties be borne & pd as the sd arbitrors or umpire shl direct.

Power to cause works to be done under supervision of surveyor (*e*).

6. The sd arbitrors or umpire shl be at liberty in & by the award to direct that any bldgs or works, wch they or he may award to be erected or exted, shl be erected or exted under the supervision or diron of such surveyor as they or he shl appt in that behalf, & to determine in what mner the fees of such surveyor shl, as betn the sd pties, be borne & pd.

Power to take opinion of counsel.

7. The sd arbitrors or umpire shl be at liberty to take the opinion of counsel upon any question arisg in the sd reference, & to state a case for such ppose, & the expense throf shl as betn the sd pties be borne & pd as the sd arbitrors or umpire shl direct.

Power to state case for opinion of Court (*f*).

8. The sd arbitrors or umpire may state any special case, facts, or circes, previous to makg their or his award, or in the award, or in any separate paper or writg accompanying the award, so that the opinion or judgmt of the —— Divon of the High Ct of Justice may be had or taken thron.

Power to direct execution of deeds.

9. The sd arbitrors or umpire shl have power to award & direct that the sd pties hto or any one or more of them or their respive representatives or assns, shl exte & do such releases,

(*e*) See *Tomlin* v. *Fordwich Corpn.*, 5 Ad. & El. 147.

(*f*) See Arbitration Act, 1889, ss. 7 (*b*); 19; and *ante*, p. 173.

convces, assurces, & things as the sd arbitrors or umpire shl think fit, & such releases, convces, assurces, & things shl be exted & done accdly.

Power to direct entry of judgment.

10. The sd arbitrors or umpire shl be at liberty to direct judgmt to be entered for the pltf or deft in the sd action, or to direct all further proceedings in the sd action to be discontinued or stayed, or to direct the sd action to be dismissed with or witht costs, or to direct such proceedings to be taken in or with respt to the sd action as to the sd arbitrors or umpire shl seem fit.

General power to direct what shall be done.

11. The sd arbitrors or umpire shl have full power in all respts to award & direct what shl be done by the sd pties resply in relon to the matters in diffce.

Power to make separate awards (*g*).

12. The sd arbitrors or umpire may from time to time make one or more separate or interim award or awards as to any of the matters in diffce, wch separate or interim award or awards shl be observed & pformed witht waitg for any other award or awards, or the final award of & concerng the matters in diffce, & notwg that such other matters in diffce shl not be determined, & may make their or his award or awards witht any limiton as to time.

Power of arbitrators to proceed *ex parte* (*a*).

13. The sd arbitrors or umpire shl be at liberty, in case of the non-attendce of either of the sd pties or of their witnesses after —— clear days' previous notice in writg under the hand of the sd arbitrors or umpire, given to the sd pties resply or their respive solors or agents, or left at or sent by post to their respective offices or places of business, notifying the time & place of meetg, to proceed *ex parte* with the sd referce.

Provision for appointment of new arbitrators (*b*).

14. In case the sd K., *one arbitror*, shl die, or neglect, or refuse, or become incapable to act as arbitror bfe an award shl have been made as to all the matters referred as afsd, then the sd A., or his representatives, or assns, shl forthwith nominate in writg some other pson to be arbitror in the place of the sd K., & so in like mner upon the death, or

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One award to be made.

(*g*) The condition that only one award shall be made is implied in all cases, unless the contrary is expressed or implied in the submission: *Gould* v. *Staffordshire, &c., Co.*, 5 Ex. at p. 223.

(*a*) See *Wood* v. *Leake*, 12 Ves. 412.

(*b*) This clause is probably superfluous; but see *Re Wilson & Eastern Counties Navigation, &c., Co.*, [1892] 1 Q. B. 81.

neglect, or refusal to act, or incapacity, of any arbitror from time to time succeedg to the place of the sd K.: And the sd B., or his representatives, or assns, shl in any of the like events nominate in writg an arbitror in the place of the sd L., or of any arbitror succeedg to his place, & every arbitror so appted shl have the same powers & authorities as the arbitror in whose place he shl have been appted.

Award not to be set aside (c).

15. No award or decision of the sd arbitrors or umpire shl be set aside or attempted so to be by reason or on acct of any technical or legal defect thrin, or any informality, omission, delay, or error of law or fact or of proceeding in or about the same or in relon thto, or on any other ground, or for any pretence, suggestion, charge, or allegon of fraud, collusion, or confederacy.

VI.

APPOINTMENT *of an* Arbitrator.

To Mr. ——.

I hby appt you arbitror to act on my behalf in respt of certn disputes & diffces wch have arisen betn me & —— under the provons of an indre dated, &c.: And I hby inform you that by a notice in writg, bearg even date herewith I have called upon the sd —— to nominate & appt an arbitror to act on his behalf in respt of the bfe mentd disputes & diffces existg betn us. As witness my hand this —— day of ——.

VII.

NOTICE *to go to* Arbitration, *and of* Appointment *of an* Arbitrator (*a*).

To Mr. ——.

Take notice that disputes & diffces havg arisen betn us concerng certn matters under the provons of an indre, &c., I desire to have the same settled by arbitron, accordg to the

(*c*) A clause in this form (in a building contract) was upheld in *Tullis* v. *Jacson*, [1892] 3 Ch. 441. See *ante*, p. 12, note (*f*).

(*a*) See Arbitration Act, 1889, s. 6.

provon in the sd indre in that behalf contd: And further, that I have appted Mr. ——, of ——, to be the arbitror on my behalf: And further, that I call upon you, within seven days from the service of this notice on you, to name an arbitror to act on your behalf in the matter of the sd disputes & diffces: And further, that if you shl neglect to name an arbitror to act on your behalf within such seven days, then the afsd disputes & diffces btn us will, accdg to the provon in the sd indre in that behalf contd, stand referred to the sd alone. As witness, &c.

VIII.

NOTICE *to* Concur *in the Appointment of a* Sole Arbitrator (*b*).

To Mr. ——.

In the matter of an arbitron betn A. & B.

Take notice that you are hby reqd to concur with me the undersigned in the apptmt of a sole arbitror to act in the above mentd matter for the pposes of the submission to arbitron made by certn articles of agrmt, dated, &c., & made, &c., psuant to & in accordce with clause —— of such agrmt. As witness, &c.

IX.

AGREEMENT *for reference to a* Sole Arbitrator *to settle the amount to be paid by a* Local Education Authority *for* Purchase-money, *&c., under the* Lands Clauses Consolidation Act, 1845 (*c*).

AN AGRMT made, &c., betn A. & B. (hrinar called the vendors), 1, & the —— County Council (*d*) [the Rural District Parties.

(*b*) See the Arbitration Act, 1889, s. 5, *ante*, p. 172.

(*c*) As to the purchase of land by a local education authority, see *post*, *sub tit.* "Conveyances on sale."

(*d*) See Local Government Act, 1888, s. 79 (1).

Council of —— (*e*)] (hrinar called the Council) [*or* the Mayor, Aldermen, & Burgesses of —— acting by their Council (hrinar called the Corporon (*f*))], 2. *Recite vendors' title subjt to leases :*

Recitals.

That land is required.

AND WHAS by virtue of the Educon Act, 1921, & of the public Acts incorpd thwith, the Council [Corporon] (acting as the local education authority) require to pchase from the vendors the land & premes coloured —— on the sd plan & more parlarly described in the schdle hto : AND WHAS the vendors have agrd with the Council [Corporon] to sell the sd lands & premes to the Council [Corporon], & to refer the question of the amt to be pd by the Council [Corporon] to the vendors in respt throf to the sole arbitron of X., of, &c., an able practical surveyor : NOW THESE PSNTS WITNESS that, in psuance of the powers & provons contd in the sd Educon Act, 1921, & the Acts incorpd thwith as afsd, & of any other power enablg them resply in this behalf, & in psuance of the sd agrmt, the vendors & the Council [Corporon] do resply hby nominate & appt the sd X. to be the sole arbitror accdg to the provons of the sd Acts, to settle & determine by his award the amt of the pchase-moy & compenson to be pd by the Council [Corporon] for the pchase of the freehd free from incumbces of the sd piece of land & premes so reqd as afsd, subjt only to the leases hrinbfe mentd, & to any derivative leases or tenancies, & for the damage (if any) to be sustained by the vendors by reason of the severg of the sd lands & premes from the other lands & premes of the vendors, or in any other mner whatsr by reason of the exercise of the powers of the sd Acts in respt of the premes. AS WITNESS, &c.

Introductory recital.

Witness.

Appointment of arbitrator.

The Schedule above referred to.

(*e*) See Local Government Act, 1894, s. 24 (7).

(*f*) See *Re Leeds Institute, &c.*, [1909] 1 Ch. 500.

X.

APPOINTMENT *by the* TENANT *for* LIFE *of* SETTLED ESTATES *with the consent of the* TRUSTEES *of the* SETTLEMENT, *of an* ARBITRATOR *to* ASSESS *the* COMPENSATION *to be paid by a* LOCAL AUTHORITY *for making a* SEWER *under the* PUBLIC HEALTH ACT, 1875 (*a*).

BOROUGH of ——, Works for sewage pposes.

Recitals. WHAS under the provons of the Public Health Acts, 1875 to 1907, the Mayor, Aldermen, & Burgesses of the Borough

Notice of proposed sewer.

(*a*) The tenant for life has power, with the consent in writing of the trustees of the settlement, to submit to arbitration, any claim, dispute or question whatsoever relating to the settled land, and with such consent, to do anything he may think proper for that purpose : S. L. Act, 1925, s. 58. As estate owner the tenant for life or statutory owner is the proper person upon whom to serve the necessary notice.

Power of tenant for life to submit to arbitration.

As to arbitration under the Public Health Act, 1875, see *ante*, p. 174. The appointment in this case must be under the hands of the persons making the appointment: *Gifford & Bury Town Council*, 20 Q. B. D. 368. As to the application of the provisions of the Arbitration Act, 1889, generally, see s. 24 of that Act, and *Tabernacle, &c., Society* v. *Knights*, [1892] A. C. 298, and of s. 9 in particular see *Knowles & Sons, Ltd.* v. *Bolton Corpn.*, [1900] 2 Q. B. 253. As to the powers of the Local Authority, see the Act of 1875, ss. 16, 18, 19, 21, 24, 26; 45 Sol. J. 573 *et seq.*, and *post*, p. 368, n. (*b*); as to the purchase of land, see ss. 175, 176, as extended by the Public Health Acts Amendment Act, 1907, s. 95; as to interference with water rights and mines, &c., see ss. 327, 332, 334, and the Amendment Act of 1883; as to compensation, see s. 308; *Horton* v. *Colwyn Bay, &c., U. D. C.*, [1908] 1 K. B. 327; *Hobbs* v. *Winchester Corpn.*, [1910] 2 K. B. 471; *Lingke* v. *Christchurch Corpn.*, [1912] 3 K. B. 595. As to the powers of the Metropolitan Borough Councils and the London County Council, see the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), the Metropolis Management Amendment Acts, 1858, 1862, 1885, 1890, and 1893 (21 & 22 Vict. c. 104; 25 & 26 Vict. c. 102; 48 & 49 Vict. c. 33; 53 & 54 Vict. c. 66, and 56 & 57 Vict. c. 55), the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 99, 100, the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4, and the Metropolis Management Acts Amendment (Bye-laws) Act, 1899 (62 & 63 Vict. c. 15). Under the Acts of 1855 and 1858 the London County Council have a discretion to decide what sewers and works are necessary in carrying out their duties for the purpose of preventing sewage from flowing into the Thames, see *Westminster Corpn.* v. *London County Council*, [1906] 2 K. B. 379. As to regulations for the protection of sewers in London see the London County Council (General Powers) Act, 1894 (57 & 58 Vict. c. ccxii.), ss. 8—17. The Council have also at times by their General Powers Acts, which have been passed annually for several years, obtained powers to construct new sewers, see, for instance, the London County Council (General Powers)

Powers of local authority.

Local authorities in London

of —— in the coy of —— (hrinar called the Corporon) being the Urban District Council of the sd Borough, have served a notice dated, &c., upon me the undersigned A., the este owner in respect of the fee simple of the settled estes comprised in a vesting deed dated etc., and the psnt tenant for life in posson, of the sd estes under the will of ——, deceased, [trust instrument] thrin referred to, that the Corporon in the exon of the powers & authorities given to & vested in them by virtue of the Public Health Act, 1875, will immedly after the —— day of —— next enter into & upon the lands & premes parlarly described in the schdle & plan annexed to the sd notice, all of wch are situate within the Borough of —— afsd, for the ppose of constructg, makg, & furnishg a sewer in, through, or under the sd lands & premes, & in the mner shown on the sd plan, wch sd sewer will form pt of the works comprd in the scheme for the sewerage of the sd Borough, or a pt throf, now being carried out by the Corporon, & also for the ppose of constructg man-holes, ventilatg shafts, valves, & sluices, & all other necy works for all or any of the pposes afsd, & that the course of the sd sewer was indicated by lines drawn on the sd plan, & thron coloured ——: And whas, I the sd A. as such este owner as afsd am entitled to compenson in respt of the permanent damage or injury to the freehd of the sd settled estes, wch will arise or be sustained by reason of the mkg & maintaing of the sd sewer & all works & things incidental thto through, under, or upon the sd respective lands & premes, & the occupon & use of any portions of the surface of the sd lands & premes wch may be permanently taken for the ppose of the sd sewer or any of the pposes afsd, And also in respt of any temporary damage or injury to the freehd of the sd settled estes, wch may arise or be sustained by or through the mkg or constron of the sd sewer or the exon of the works & things incidental thto, the amt of such compenson in respt as well of such permanent as of such temporary damage or injury being payable to the undersigned B. & C., the trees of the settlemt for the pposes of the S. L. Act, 1925 (as I, the sd A., do hby admit): And whas I the sd. A. am desirous of havg

Claim for compensation.

Desire for arbitration.

Act, 1906 (6 Edw. 7, c. cl.), ss. 16—23, some of which allow the Council to take parts of premises without being compelled to take the whole, with a proviso that they shall not take or interfere with the main structure; see, for example, the Act of 1906 (c. cl.), s. 11, and the Act of 1907 (c. clxxv.), s. 19.

the amt of such compenson settled by arbitron under the provons of the Public Health Act, 1875: NOW I the sd A., do accdly, in psuance of the provons of the sd Act, and in exercise of the power for this ppose vested in me by the S. L. Act, 1925, hby nominate & appt X., of, &c., to be an arbitror on my pt to settle & determine the amt (*a*) of compenson payable by the Corporon in respt of such permanent & temporary damage or injury resply as afsd, the amt of such compenson in respt of such permanent damage or injury to be assessed & determined if required by me, separately from the amt of compenson for such temporary damage or injury as afsd, & the amt of compenson, whether for permanent or temporary damage or injury, payable in respt of any specified portion of the sd lands & premes to be also, if reqd by me, assessed & determined separately from the amt payable in respt of the remr of the sd lands & premes: AND we the undersigned trees do hby consent to the sd apptmt of the sd X., as arbitror for the pposes afsd: PROVD ALWAYS that this referce to arbitron & the compenson to be awarded in psuance throf sh not cover or extend to any damage or injury wch may arise to the sd settled estes, in respt of any entry wch may be made by the Corporon upon any pt of the sd settled estes & premes, or any works wch may be exted by them for the ppose of mkg any connectg drains or communicons from the sd sewer to any house or premes near or adjoing the same, or in respt of any such entry or works wch may be made or exted by the Corporon at any time after the origl constron or makg of the sd sewer or any such connectg drains or communicons as afsd, for the ppose of repairg, cleansg, alterg, closg up, discontinuing or removg the same resply or orwise in relon thto: PROVD ALSO that nothg hrinbfe contd shl be construed as operatg as a licence or permission to the Corporon to make any entry upon any of the sd lands & premes, or to exte or do any works or things wch they are not lawfully entled to make, exte or do under the powers conferred upon them by the Public Health Act, 1875, or any Acts amending or extending the same. Dated, &c.

Appointment of arbitrator.

Consent of trustees.

Reference not to extend to damage by branch drains.

Nor to extend the powers of the Authority.

(Signed) A., B., & C.

(*a*) The amount so paid would be capital money. Where a tenant for life pays expenses incurred by a Local Authority and charged on the land under the Public Health Act, 1875, he can charge the inheritance with them; *Re Smith's S. E.*, [1901] 1 Ch. 689; cf. *Re Pizzi*, [1907] 1 Ch. 67.

XI.

APPOINTMENT *of* UMPIRE *by* ARBITRATORS *by* ENDORSEMENT *on the* AGREEMENT *of* REFERENCE *or otherwise* (*b*).

WE, [the within named] A. & B., in psuance of the powers given to us by the within contd agrmt, *or*, " by an agrmt of reference, dated, &c.," *or*, " by an order made by, &c., on the —— day of ——, in an action, &c.," do hby nominate & appt X., of, &c., to be the umpire accdg to the provons of the sd agrmt, *or*, " order," of reference, provd he will accept the office, & do within —— days from the date hrof signify such acceptce in writg. AS WITNESS, &c.

XII.

APPOINTMENT *by* TWO ARBITRATORS *of a* THIRD ARBITRATOR *to act with them* (*c*).

WE, &c., *as in last Precedent*, do hby nominate & appt X., of, &c., to be the third arbitror to act with us in the conson & determinon of the matters referred to us accdg to the provons of the sd agrmt, *or*, " order," of reference, provd he will accept the office, & do within —— days from the date hrof signify such acceptce in writg. AS WITNESS, &c.

XIII.

NOTICE *by* ARBITRATORS *to* UMPIRE *of final* DISAGREEMENT (*d*).

To Mr. ——.

WE hby give you notice that we cannot & shl not be able to agree in makg an award concerng the matters referred to us by an agrmt, *or*, " order," dated, &c., but have finally disagrd about the same, & that you are at liberty to proceed as umpire to consider & award upon the matters referred. Dated, &c.

(*b*) See *Re Hopper*, L. R. 2 Q. B. 367 ; Arbitration Act, 1889, Sched. I. (*b*), *ante*, *p.* 170.

(*c*) As to the remedy where such an appointment is not made, see Arbitration Act, 1889, s. 5, *ante*, p. 172. All three arbitrators must in this case concur in making the award : *United Kingdom, &c., Assn.* v. *Houston & Co.*, [1896] 1 Q. B. 567.

(*d*) See Arbitration Act, 1889, Sched. I. (*d*), *ante*, p. 170.

XIV.

ENLARGEMENT *of* TIME *for making* AWARD *by* ARBITRATOR *or* UMPIRE (*a*).

I, [the within named] A., in psuance, &c., *as in Precedent* XI., do hby enlarge the time for makg my award concerng the matters referred to me until the —— day of ——. As WITNESS, &c.

XV.

ENLARGEMENT *of* TIME *by the Parties.*

Time enlarged.

WE, [the within named] A. & B., do hby give & allow to X.; the arbitror, *or*, "umpire," appted by the agrmt of reference within contd, *or*, "by an agrmt," *or*, "order," &c., *as in Precedent* XI., further time for makg his award, namely, until the —— day of ——: AND WE FURTHER DECLARE & agree that all the provons of the sd agrmt, *or*, "order," of reference shl continue in full force & effect, & be construed & read in the same mner as if the day hby given & allowed for makg the award of the sd arbitror, *or*, "umpire," had been given & allowed by the sd agrmt, *or*, "order." AS WITNESS, &c.

Agreement to hold good.

RECITALS IN AWARDS.

That disputes have arisen.

1. WHAS divers disputes & diffces have arisen betn, &c.; concerng, &c., *or*, "under an agrmt, &c."

Action and order of reference.

2. WHAS an action has been instituted by the sd A. agst the sd B., touchg the premes & the same is now pendg, & by an order made in the sd action on, &c., it was ordered, &c.

Appointment of arbitrator.

3. WHAS the sd A. by an instrumt in writg dated, &c., under his hand, appted [me the sd] B. to be the arbitror on his behalf in respect of the matters afsd.

(*a*) As to the power of the Court to enlarge the time, see Arbitration Act, 1889, s. 9. The power is exercisable in cases of arbitration under the Public Health Act, 1875: *Knowles & Sons, Ltd.*, v. *Bolton Corpn.*, [1900] 2 Q. B. 253.

Appointment of arbitrator by a company.

4. WHAS the sd Co by an instrumt in writg dated, &c., under the hand of A. their secretary, appted [me the sd] B. to be the arbitror on their behalf in respt of the matters afsd.

Appointment of umpire.

5. WHAS the sd arbitrors [bfe enterg into the conson of the sd mres] by an instrumt in writg dated, &c., under their hands [endorsed on the sd agrmt] appted [me the sd] X. to be the umpire in the matter of the sd arbitron psuant to the sd agrmt [order].

Substituted appointment of umpire.

6. WHAS the sd X. havg become unable to act as such umpire as afsd the sd arbitrors [bfe enterg into the conson of the sd matters] by an instrumt in writg dated, &c., under their hands, appted [me the sd] A. to be the umpire in the matter of the sd arbitron in the place of the sd X.

Enlargement of time for making award.

7. WHAS we [the sd *arbitrors*] by an instrumt in writg under our [their] hands dated, &c., duly extended the time for makg our [their] award dated, &c.

Disagreement of arbitrators and failure to make award.

8. WHAS the sd *arbitrors* have finally disagrd & differed & have altogether failed to make their award in the sd matters, of all of wch I have duly had notice, whby the sd matters so referred to the sd arbitrors as afsd have duly come bfe me as umpire for determinon.

Failure of arbitrators to make award within time limited.

9. WHAS the sd *arbitrors* did not make any award of & concerng the premes within the time limited by the sd agrmt [order] of reference.

Agreement that no objection should be taken to award for informality.

10. WHAS doubts havg been entertained as to the effect of the declon required by law havg been made & subscribed by me [the sd B. on, &c., & by myself] on, &c., by reason of the same being prior to the date of the apptmt of me [the sd B. & myself] as arbitror [& umpire resply] in the sd arbitron, the sd pties on, &c., mutually agrd in writg that no objon shd be taken to the award by reason of such informality (if any).

CLAUSES IN AWARDS.

Award of damages for non-performance of agreement.

1. I AWARD & adjudge that the pltf has sustained damages by reason of the non-pformce by the deft of the agrmt in the statemt of claim mentd in the amt of £——, *or*, "I ASSESS the damages sustained by the pltf in respt of the cause of action in the statemt of claim mentd at the sum of £——,"

wch sum I direct the deft to pay to the pltf on or bfe the —— day of ——.

2. I AWARD that the sd A. shl pay the sd B. on demand the sum of £—— in full satisfon of all claims & demands whatsr [relative to the matters referred to me, *or*, "in the above-mentd action"]. Award of sum in satisfaction of all demands.

3. I AWARD & order that the sd damages & the sd sevl sums of moy awarded & directed by me to be pd & the sevl matters & things awarded & directed by me to be done by or with regard to the respective pties to this reference as afsd, shl resply be pd, received, done, accepted & taken, in full satisfon & discharge & as a final end & determinon of the sevl matters in diffce betn the sd pties wch have been referred to me, *or*, "of all matters in diffce betn the sd pties up to the time of the reference to arbitron" (*a*). Sums, &c., awarded to be in satisfaction of all demands.

4. I further award & adjudge that the sd A. & B. shl each, on the requon of the other of them [such other havg first pformed the award], & at the costs & charges of the party requirg the same, exte & delr unto the other of them a full & sufft release of all [actions, causes of action, &] debts, damages, claims, & demands whatsr, from the beginng of the world, until the time of the sd reference to arbitron, *or*, "of all claims & demands in respt of the mres in diffce betn the sd pties wch have been referred to me as afsd," exceptg anythg by the award provd to be done or suffered. Award of mutual releases.

5. I further award, &c., that upon paymt of the sum awarded by me as afsd, the sd A. shl, if reqd, by & at the costs of the sd B., exte & delr to him, the sd B., a full & sufft release, &c., *as in the last clause.* Award of release by one party.

6. I AWARD, &c., that the pltf has no title to the relief sought by his above-mentd action in the —— Divon of the High Ct of Justice, & that the sd action be dismissed with costs, to be taxed by the pper officer & pd by the pltf to the deft. Dismissal of action with costs.

7. I AWARD, &c., that the sd action shl cease & be no further prosecuted, *or*, "that all proceedings in the sd action shl cease, & that the same shl be no further prosecuted." Proceedings in action to be stayed.

(*a*) Having regard to the definition of "submission" contained in the Arbitration Act, 1889, s. 27, the use of that word in the sense of reference is inadvisable; see *Re Smith & Service*, 25 Q. B. D. at p. 553.

That plaintiff has no cause of action.

8. I AWARD, &c., that the pltf has been fully pd all demands wch he had agst the sd deft, & has no cause of action against him.

Apology to be made.

9. I AWARD, &c., that the sd B. shl at his own expse make & publish in the —— newspaper a pper apology, statg, &c.

Plaintiff good cause of action on two claims, none on 3rd.

10. I AWARD, &c., that the pltf has a good cause of action against the deft in respt of the first & second paragraphs of the prayer of his statemt of claim in the sd action for the sum of £——, wch sum I direct the deft to pay to the pltf on demand: AND I further award that the pltf has no cause of action aganst the deft in respt of the third paragraph of the prayer of the sd statemt of claim.

Of damages generally.

11. I AWARD & find that the pltf has sustained damages from the deft occasioned by the cause of action for wch the sd action was brought to the amt of £——, & I assess the pltf's damages at the sd sum of £——, & direct the deft to pay the same to the pltf on demand.

Conveyance to be executed.

12. I AWARD, &c., that the sd B. shl, at the reqt & cost of the sd A., by a pper & effectual assurce, convey, *pcels*, with the appurts to the sd A. in fee simple or as the sd A. may direct, such assurce to be prepared by the sd A.

Registered transfer to be made.

13. I AWARD, &c., that the sd B. shl at the reqt & cost of the sd A. transfer the land of wch he is the registered proprietor with a —— title under the L. R. Act, 1925, under the heading District —— Parish —— & Title No. —— to the sd A., or as he shl direct.

Delivery up of deeds.

14. I AWARD, &c., that the sd B. shl forthwith deliver to the sd A. all deeds & writgs in the custody or power of the sd B. relatg to the sd freehd premes.

That one party has no claim against the other.

15. I AWARD, &c., that the sd A. has no claim or demand agst the sd B. in respt of any of the matters in diffce betn them.

As to other matters in difference.

16. I AWARD, &c., that there are no matters in diffce betn the pties other than those in the sd action, *or*, "AND as to the matters in diffce betn the sd pties other than those in the sd action, I award, &c., that the deft do pay to the pltf the sum of £—— in full satisfon & dischge of all claims & demands by the pltf agst the deft in respt of the same."

Payment of costs of action.

17. I AWARD, &c., that the sd A. do pay to the sd B. the costs of the sd action, to be taxed by the pper officer.

18. I AWARD, &c., that judgmt be forthwith entered in the sd action for the pltf [deft], with the costs of the sd action, & of the reference & of this my award, to be taxed by the pper officer of the sd Court. Judgment to be entered for plaintiff, or defendant.

19. I AWARD, &c., that each party shl bear his own costs of the action. Each party to pay his own costs of action.

20. I AWARD, &c., that the costs of both pties of the sd action when taxed shl be added togr, & that one moiety throf shl be pd & borne by the pltf & the other moiety by the deft & that if either party shl have pd more than his just share, the excess shl be pd to him by the other party. Costs of action to be borne equally.

21. I AWARD, &c., that exon may issue in the sd action for the sd damages & costs forthwith, *or*, " at any time not sooner than the —— day of —— next." Execution to issue for damages and costs.

22. I AWARD, &c., that the sd A. do pay to the sd B. his costs of & incidental to the reference, & the costs of the award, & that the sd A. do bear his own costs of the same. All costs of reference and award to be paid by one party (*a*).

23. I AWARD, &c., that each of the sd pties shl bear his own costs of the reference, & pay one-half of the costs of the award : AND that if either party shl in the first instance pay more than such half, the excess shl be pd to him by the other party. Each party to bear his own costs of reference and half costs of award.

24. I AWARD, &c., that one moiety of the costs of the reference & award shl be borne & pd by the sd A., & the other moiety by the sd B., & that if either party shl in the first instce, &c., *as in last clause.* Half costs of reference and award to be paid by each party.

25. I DIRECT the costs of the pltf of the sd reference & of this my award to be taxed as betn solor & client by A., of, &c., *or*, " one of the taxg-masters of the —— Divon of the High Ct of Justice," *or*, " I ASSESS the amt of the costs of the pltf of the sd reference at £——, & of this my award at £——." Taxation or assessment of costs.

(*a*) As to awarding costs, see *Harland* v. *Newcastle Corpn.*, L. R. 5 Q. B. 47 ; Arbitration Act, 1889, Sched. I. (*i*), *ante*, p. 171. An umpire awarding costs should separate his own charges from the costs awarded to the arbitrators, *Gilbert* v. *Wright*, 20 T. L. R. 164. Awarding costs.

PRECEDENTS OF AWARDS.

I.

AWARD *by* ARBITRATORS (*b*) *or* UMPIRE *under an* AGREEMENT *or Order of* REFERENCE *settling a Balance of* ACCOUNTS (*c*).

Recitals. THIS IS THE AWARD OF US, A. of, etc., & B., of, etc., in relaton to the matters referred to us as hin appearg ; *Recite that disputes have arisen : agrmt of reference : or, action & order of reference :* [*failure of arbitrors to make award & apptmt of umpire*] *enlargemt of time for makg award, or as the case may be ; see* p. 192 : NOW WE, the sd, *arbitrors,* [I, the sd, *umpire*],

Award. havg taken upon ourselves [myself] the burthen of the sd reference [*umpirage*], & havg heard, examined, & considered the allegons of the sd pties, & the witnesses, documts, & evidce of both the sd pties concerng the premes, do hby make & publish our award [my award & umpirage] in writg of & concerng the

Balance due. premes in mner followg, that is to say : WE [I] FIND & award that the balce due from the sd N. to the sd M. upon the settlemt of the accts betn them wch have been referred to us [me] as afsd is £——, wch we [I] award & direct to be pd by the sd N. to the sd M. on demand : AND, &c., *award as to dismissal or discontinuance & costs of action (if any), & costs of reference & award, & mutual reles ; see above clauses.*

Signed & published in the presence of }

(*b*) Where the reference is to more than one arbitrator, all must concur in making the award : *United Kingdom, &c., Assn.* v. *Houston & Co.*, [1896] 1 Q. B. 567.

Stamp on award. (*c*) The stamp on an award is 10*s.* : Rev. Act, 1906, s. 9.

II.

AWARD *by* ARBITRATORS *under the* LANDS CLAUSES CONSOLIDATION ACTS. VARIOUS RECITALS. PROVISIONS *as to* COMPENSATION *for* REMOVAL *of and* DAMAGE *to* MACHINERY (*a*).

THIS IS THE AWARD, &c.: WHAS by 2 sevl instrumts in writg dated resply, &c., under the hand of D., secretary to the —— Rly Co, addressed to E., of, &c., notice was in psuance of the, *special Act*, & the Acts incorpd thwith given by the sd Rly Co, to the sd E., that they the sd Co reqd to pchase & take for the pposes of the rlys & the works connected thwith authorised by the first-mentd Act, the lands & ppty resply specified & described in the respive schdles thto & coloured —— on the respective plans accompanying the sd notices, the sd premes comprd in the first of the sd notices being desed in the schdle thto as, &c.; *the same as to ppty schdled to 2nd notice:* AND that the sd Co were willg to treat for the pchase of the sd respive lands & ppties so required as afsd, & of the intt of

Recitals.

Notice to treat (*b*).

(*a*) An award under the Lands C. C. Acts ought to be taken up by the Co.: *Earl of Shrewsbury* v. *Wirral Railways Committee*, [1895] 2 Ch. 812; *L. & N. W. Rly. Co.* v. *Walker*, [1900] A. C. 109; *R.* v. *Barton, &c., Rly. Co.*, [1912] 3 K. B. 72. In other cases it is generally taken up by the successful party. As to the effect of the arbitrators having taken evidence on matters not referred to them, see *Falkingham* v. *Victorian Railways Commr.*, [1900] A. C. 452. As to assessing compensation for minerals, see *Bwllfa, &c., Ltd.* v. *Pontypridd Waterworks Co.*, [1903] A. C. 426; *Re Richard & G. W. Rly. Co.*, [1905] 1 K. B. 68; *Eden* v. *N. E. Rly. Co.*, [1907] A. C. 400; *Rugby, &c., Co.* v. *L. & N. W. Rly. Co.*, [1908] 2 K. B. 606. And see generally as to awards under this Act, Russell, 10th ed., 429 *et seq.*

(*b*) As to the effect of a notice to treat, see CONTRACTS FOR SALE, *post*, p. 406. After notice to treat the owner cannot deal with any of his land, either taken or injuriously affected by the company, so as to increase the burden of the company as regards the compensation payable. The creation, therefore, of a new interest in the land after the date of the notice to treat, though before the amount of compensation payable is definitely fixed, does not give rise to any fresh right to compensation: *Mercer* v. *Liverpool, &c., Rly. Co.*, [1904] A. C. 461; *Zick* v. *London United Tramways, Ltd.*, [1908] 2 K. B. 126. There is, however, nothing to prevent the owner from dealing with his land subject to the rights of the company under their notice to treat: *Cardiff Corpn.* v. *Cook*, [1923] 2 Ch. 115.

the sd E. thrin, & as to the compenson to be made to him for the damage that might be sustained by him by reason of the exon of the rlys & works authorised by the first above-mentd Act : AND WHAS the sd E. by an instrumt in writg dated, &c., under his hand, gave notice to the sd Rly Co that he was entled to the sd lands & ppty comprd in the sd first notice for an este, &c. : *Description of E.'s intt in the premes comprd in the two notices : recite apptmt of arbitror by E., & by Rly Co : apptmt of umpire by arbitrors : extension of time for makg award : apptmt of substituted umpire :* see p. 192 : AND WHAS in the course of the proceedings bfe us it was agrd that the sd E. shd retain for his own use & remove from the ppty comprd in the sd first notice the engine, boiler, machinery, & fixtures & fittgs in the nature of trade machinery, wch were affixed to the pts of the same ppty occupied by him, & that the sd Co shd pay to the sd E. the sum of £—— for the expses incurred by him in connection with such removal & for any damage to the sd engine, &c., wch might be occasioned through the removal throf : NOW THESE PSNTS WITNESS that we the sd A. & B. havg taken upon ourselves the charge of the sd reference & havg previously to enterg upon the matters referred to us as afsd made & subscribed the declons hrunto annexed (*d*), & nominated & appted in writg C., of, &c., to be the umpire to decide upon any of the sd mres on wch we shd differ, & havg duly heard, examined, & considered the allegons, witnesses, & evidce of both the sd pties concerng the premes, do togr at the same time & in the presce of each other (*e*) make this our award in writg of & concerng the premes in mner followg, that is to say : WE AWARD assess & determine that the followg sums are the amts to be pd by the sd Rly Co to the sd E. for & in respt of the pchase of & in compenson for the value of his intt in the respective lands & ppties comprd in the sd respive notices to treat, & for all damage (*f*) sustained by him by reason of the exon of the rlys & works

Notice by vendor of his interest in the lands.

Agreement as to trade fixtures (*c*) and machinery.

Testatum.

Award.

(*c*) For the purpose of s. 85 of the Lands C. C. Act, 1845, enabling promoters to enter upon the land before an agreement has been come to or an award made, trade fixtures are to be deemed part of the land: *Gibson* v. *Hammersmith & City Rly. Co.*, 2 Dr. & Sm. 603.

(*d*) See Lands C. C. Act, 1845, s. 33.

(*e*) See Russell, 10th ed., p. 410 ; *Stalworth* v. *Inns*, 13 M. &. W. 466 ; *Eads* v. *Williams*, 4 De G. M. & G. 674.

(*f*) See Lands C. C. Act, 1845, s. 63.

authorised by the sd first above-mentd Act, that is to say, the sum of £—— (in wch is included the sd sum of £——, payable by the sd Rly Co under the agrmt lastly hrinbfe recited), for the value of the intt of the sd E. in the lands & ppty comprd in the first of the sd notices to treat dated, &c., & the sum of £—— for the value of his intt in the lands & ppty comprd in the second of the sd notices to treat, &c. (*a*). In witness, &c.

III.

AWARD *by* Umpire *in respect of* Property *injuriously affected but not taken by a* Railway Company (*b*).

THIS IS THE AWARD, &c., *Recitals, see above:* NOW THESE PSNTS WITNESS that I, the sd A., &c., *see Precedent* I., p. 196, that is to say: I do hby find that by reason of the obstron of the main public highway leadg in a —— diron from —— Bridge, & known as —— Street, *or as the case may be,* upon wch the sd premes of the sd B. abut, by &c., *describe specifically the works causg the prejudice,* access to & from the sd premes of the sd B., from & to, &c., is rendered less direct & convenient than formerly, & the lettg value of the sd premes of the sd B. diminished in conseqce throf: And upon the assumption that compenson is payable I award, assess, settle and determine that the sum of £—— is the amt to be pd in respt

Witnesseth.

Finding.

Award.

(*a*) As to the costs of the arbitration, see Lands C. C. Act, 1845, s. 34, and Lands C. C. Act, 1895, s. 1. The offer of the promoters under the former section must be of a definite sum of money, and must not be embarrassing: *Fisher* v. *G. W. Rly. Co.*, [1911] 1 K. B. 551. Costs.

(*b*) In such a case the arbitrator can only determine the amount, and not the question whether the claimant is entitled, which latter is one of law for the Court. As to the law with regard to lands injuriously affected but not taken by a railway company, see Lands C. C. Act, 1845, s. 68; *Caledonian Rly. Co.* v. *Walker*, 7 App. Cas. 259; *Furness Rly. Co.* v. *Cumberland, &c., Socy*, 52 L. T. 144. A landowner is entitled to compensation under this section if the company takes land subject to restrictive covenants in his favour: *Long Eaton, &c., Co., Ltd.* v. *M. Rly. Co.*, [1902] 2 K. B. 574. Mortgagees have the same rights as ordinary owners as regards compensation for other land held by them being injuriously affected: *R.* v. *Middlesex Clerk of the Peace*, [1914] 3 K. B. 259. The award and not the right to compensation is the cause of action. The award may therefore be enforced at any time within six years from the date at which it is made: *Turner* v. *M. Rly. Co.*, [1911] 1 K. B. 832. Arbitrator's jurisdiction. Lands injuriously affected but not taken.

throf by the sd Rly Co to the sd B. as este owner in respt of the fee simple of the sd premes : AND I further find that by reason of the obstruction throf as afsd —— Street so far as it lies betn the sd rly &, &c., has ceased to be a main thoroughfare, & in conseqce throf the lettg value of the sd premes of the sd B. has been diminished : AND upon the assumption that compenson is payable, I award, &c., that the sum of £—— is the amt to be pd by the sd Rly Co to the sd B. as este owner in respt of the fee simple of the sd premes in respt of the diminon in the value throf lastly hrinbfe-mentd. IN WITNESS, &c.

Further finding.

Further award.

IV.

AWARD *by* UMPIRE *on a* BUILDING CONTRACT.

Recitals. Building contract.

THIS IS THE AWARD, &c., WHAS by a contract in writg, dated, &c., & made betn B., of, &c., & C., of, &c., for th eron by the sd C. for the sd B. of a dwghouse at, &c., the sd C. was to exte the works described in the specificon thto annexed, & in the plans & drawgs thrin referred to, & provon was made with respt to addons to & omissions from the sd intd works, & it was provd that any disputes with respt to what shd be deemed addonal or omitted work & the value throf shd be referred to the arbitron of the architect of the works, & anor architect to be nominated by the sd C. ; & in case of the sd arbitrors not agreeing, then to the decision of an umpire who shd be an architect, & chosen by the sd arbitrors bfe enterg upon the conson of the matters in dispute : AND WHAS disputes have arisen betn the sd B. & C. as to what shd be deemed addonal & omitted work within the meang of the sd contract, & such disputes have been referred to the arbitron of D., of, &c. (the architect of the sd works), & E., of, &c. (an architect nominated by the sd C.), *Apptmt of umpire, disagrmt of arbitrors & failure to make award & other clauses, see* pp. 191, 192 : NOW, &c., *see Precedent I.*, p. 196, that is to say, I find & award that the work described in the first column of the first schdle hto is addonal work within the meang of the sd contract : AND I award & assess the value of the sd addonal work at the respective sums set opposite thto in the second column of the sd first

Provision as to arbitration.

Disputes have arisen and been referred.

Finding and award.

schdle : And I further find & award that the work described in the first column of the second schdle hto is omitted work within the meang of the sd contract : And I award & assess the value of the sd omitted work at the respective sums set opposite thto in the second column of the sd second schdle. In witness, &c.

Schdles.

ATTORNEY, POWERS OF.

PRELIMINARY NOTE.

When power must be under seal.

In many cases a man may by parol, or by writing not under seal, authorise another to do something in or to sign his name: *Naylor* v. *Mortimore*, 17 C. B. (N. S.) at p. 233; *R.* v. *Kent Justices*, L. R. 8 Q. B. 305; *Re Whitley*, 32 Ch. D. 337; *France* v. *Dutton*, [1891] 2 Q. B. 208; but where the authority is to execute a deed: Shep. Touch. 58; unless the deed is executed in the presence of the principal who then gives parol authority to execute it: R. *v.* Longnor, 4 B. & Ad. 647; or to transfer stock at the Bank of England, and possibly in some other cases, the authority must be given by deed, which is called "letters" or "power" of attorney.

Attestation.

It is in some cases necessary (*e.g.*, to meet the requirements of the Bank of England, as to which see r. 18 of the regulations under the Fin. Act, 1911, s. 17, [1912] W. N. pt. 2, p. 116, and many other public bodies), and in all cases desirable, that the execution of a power of attorney should be attested by two witnesses.

Registered land.

As to the execution by attorney of assurances to be registered under the Land Registration Act, 1925, see L. R. Rule 82.

Exercise of power of attorney

A power, involving the exercise of discretion by the donee (other than a general power), could not formerly have been exercised by attorney: *Combe's Case*, 9 Co. Rep. at p. 75 a; except when it had to be exercised in a foreign country: *Stuart* v. *Norton*, 14 Moo. P. C. C. 17. This rule is to a large extent abrogated by s. 25 of the T. Act, 1925, which provides that a trustee, including a personal representative (s. 68 (17)) and including also for this purpose a tenant for life and a statutory owner (s. 25 (11)), who intends to remain out of the United Kingdom for more than one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney delegate to any person (including a trust corporation) the execution or exercise during his absence from the United Kingdom of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons; but with the qualifications that the person appointed (unless a trust corporation) must not be the only other co-trustee. The power of attorney must be attested by at least one witness and must be filed at the central office within ten days after its execution together with a statutory declaration by the donor that he intends to remain out of the United Kingdom for more than one month from the date of such declaration or from a date therein mentioned (sub-s. 4); and is not to come into operation unless and until the donor is out of the United Kingdom, and is to be revoked by his return (sub-s. 3). It is further provided, however, that such a statutory declaration and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any

person dealing with the donee (sub-s. 7), in whose favour also, unless he has had actual notice that the power has never come into operation or has been revoked, any act done or instrument executed by the donee is made as valid and effectual, notwithstanding that the power may never in fact have come into operation or may have been revoked, as if it had been done or executed by the donor himself (sub-s. 8). Lastly, it is provided (sub-s. 9) that for the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer, but not including the power of delegation so newly conferred. A power to do a merely ministerial act, involving no discretion, such as a power to execute a specified deed, could always have been exercised by attorney: *Re Hetling & Merton*, [1893] 3 Ch. at p. 280.

Naked powers distinguished from powers coupled with an interest.

Powers of the nature of those included in the following forms and precedents are ordinary common law or "naked" powers enabling the donee to do some ministerial act for or on behalf of the donor; and must be carefully distinguished from powers or authorities given for the purpose of securing some benefit to the donee. Powers of the latter class which are frequently inserted in mortgages (see Vol. 2, pp. 89, 212) and formerly were invariably inserted in assignments of choses in action (see Wood's Conveyancing, *sub. tit.* "Assignments") are referred to in the books as powers coupled with an interest: see *Smart* v. *Sanders*, 5 C. B. at p. 917; and in the L. P. Act, 1925, as powers given for valuable consideration.

Power of donor to revoke.

Subject to the statutory modification contained in s. 127 of the L. P. Act, 1925, naked powers are in their nature revocable by the donor: *Vynior's Case*, 8 Co. Rep. 82 a. Powers coupled with an interest, on the other hand, are in their nature irrevocable by the donor: *Walsh* v. *Whitcombe*, 2 Esp. 565; *Watson* v. *King*, 4 Camp. 272; and see *Frith* v. *Frith*, [1906] A. C. 254.

Death of donor or donee: —Naked power.

A naked power, unless made irrevocable for a specified time under s. 127 of the L. P. Act, 1925, is revoked by the death (Co. Lit. 52 b; Sugden, V. & P. 14th ed. 417); or bankruptcy of the donor (see *Drew* v. *Nunn*, 4 Q. B. D. at pp. 665, 666; *Ex p. Snowball*, L. R. 7 Ch. at p. 548; *Markwick* v. *Hardingham*, 15 Ch. D. 339 and see *Re Williams*, [1917] 1 Ch. at p. 7), and necessarily determines on the death of the donee, even though expressly made exercisable by his representatives.

—Power coupled with an interest.

A power coupled with an interest may amount in equity to a charge: *Abbott* v. *Stratten*, 3 J. & Lat. 603; in which case (apart altogether from the provisions of the L. P. Act, 1925) it will enure as a charge for the benefit of the donee, his executors, administrators, and assigns, notwithstanding the death of the donor: *Spooner* v. *Sandilands*, 1 Y. & C. C. C. 390; the mere legal operation of the instrument going for nothing. But even a power coupled with an interest, unless accompanying an assignment of a chose in action (*Pearson* v. *Amicable Assce. Office*, 27 Beav. 229), or forming part of a security given to the donee, is necessarily determined (unless made irrevocable under s. 126 of the L. P. Act, 1925) by the death of the donor: *Lepard* v. *Vernon*, 2 Ves. & B. 51; see *Watson* v. *King*, 4 Camp. 272; *Carter* v. *White*, 20 Ch. D. at p. 228; 25 Ch. D. 666; and ceases on the death of the donee unless given, as now it may be (L. P. Act, 1925, s. 128), to a purchaser of property or any interest therein (see L. P. Act, 1925, s. 205) "and to the persons deriving title under him thereto."

Lunacy of donor.

Where the donor of a power subsequently becomes of unsound mind, he is at common law bound by the act of his attorney to a person who does not know of the unsoundness of mind: *Drew* v. *Nunn*, 4 Q. B. D. 661; see 45 Sol. J. 359; but where the donor is of unsound mind at the time of the execution of the power, the power itself and, consequently, all acts and deeds founded upon it are absolutely void: *Daily Telegraph Newspaper Co.* v. *McLaughlin*, [1904] A. C. 776.

Married women.

By the L. P. Act, 1925, s. 129, a married woman, whether an infant or not, is enabled to appoint an attorney to execute a deed or do any other act which she herself might execute or do. Income subject to a restraint on anticipation ought not to be paid to an attorney: see *Kenrick* v. *Wood*, L. R. 9 Eq. 333; *Stewart* v. *Fletcher*, 38 Ch. D. 627. At common law a married woman could not give a power of attorney except, perhaps, with the consent of her husband: see *Cooper's Case*, 2 Leon. 200; ——— v. *Hopkins*, Cro. Car. 165, and note, 2 Buls. 13, overruling some earlier cases; see also the remark of Erle, C.J., in *White* v. *Greenish*, 11 C. B. (N. S.) at p. 230. And a power given by an unmarried woman was in general revoked by her marriage; but it would seem that by the effect of the above enactment, coupled with the M. W. P. Act, 1882, removing the disabilities of married women as to property and contracts, marriage would not now operate as a revocation. The references to "the death, *marriage*, lunacy, unsoundness of mind, or bankruptcy of the donor" in the repealed sections 8 and 9 of the C. A., 1882, which seemed to imply that marriage might so operate, are replaced in sections 126 and 127 of the L. P. Act, 1925, by references to "the death, disability, or bankruptcy of the donor."

Infant.

Except in cases falling within the L. P. Act, 1925, s. 129, an infant cannot appoint an attorney: *Zouch* v. *Parsons*, 3 Burr. at p. 1804.

Statutory protection against revocation.

The L. P. Act, 1925, s. 124 (1), replacing the C. Act, 1881, s. 47, provides that no person shall be liable for making or doing any payment or act in pursuance of a power of attorney in good faith after the principal has, unknown to him, died or become subject to disability or bankrupt, or revoked the power; and sub-s. 2 of the same section provides that a statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act so made or done, be taken to be conclusive proof of such non-revocation at the time of such payment or act. If the donee is a corporation aggregate, the officer appointed to act for the corporation in execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power. The first sub-section protects the attorney acting under the power without notice of its revocation, and with the second sub-section, which is new, enables a purchaser taking a conveyance under a power of attorney to obtain a valid receipt for the purchase money, and, consequently, a good equitable title to the property with the right to call for the legal estate in case, by actual revocation by death or otherwise, before the execution of the conveyance, it should be left outstanding. As the statutory declaration by the attorney is made conclusive proof of non-revocation, it would seem that a purchaser can no longer insist, as under the old practice, upon retaining or depositing the purchase money pending further evidence of non-revocation, but would have his remedy, in case of actual revocation, on the covenant for further assurance.

The T. Act, 1925, s. 29, contains similar provisions in reference to a

trustee acting or paying money in the like circumstances, but with the omission of those relating to the statutory declaration. This seems to be superfluous legislation as there is nothing in the L. P. Act, s. 124, to limit the meaning of the words "any person."

As to the liability of the donee of a power to third persons whom he has induced to deal with him after the power is at an end upon the faith that he has in fact the authority which he assumes, see *Yonge* v. *Toynbee*, [1910] 1 K. B. 215; *Simmons* v. *Liberal Opinion, Ltd.*, [1911] 1 K. B. 966.

Statutory provisions for making power irrevocable.

By the L. P. Act, 1925, s. 126, a power of attorney given *for value* may be made irrevocable in favour of a *purchaser* (which includes a mortgagee or lessee, or other person dealing for value) so as not to be revoked or affected by the death disability or bankruptcy of the donor of the power, or anything done by the donor without the concurrence of the donee; and by s. 127, a power of attorney, *whether given for value or not*, may be made irrevocable in like manner for a *fixed time* not exceeding one year, in favour of a *purchaser* (including a mortgagee, &c.). In both cases the power must be *expressed* to be irrevocable. Such a power is not revoked by the donee becoming an alien enemy: *Tingley* v. *Müller*, [1917] 2 Ch. 144.

Companies.

A company cannot delegate to an attorney the exercise of any power involving discretion or directed by the articles to be exercised by the company or the directors, but there is no objection to their appointing an attorney for a mere ministerial purpose, as, for example, to transfer consols. A company registered under the Companies C. Act, 1908, has express power (s. 78) to appoint an attorney to execute a deed abroad. As to the liability of the attorney after dissolution of the company, see *Yonge* v. *Toynbee*, [1910] 1 K. B. 215; disapproving *Salton* v. *New Beeston Cycle Co.* [1910] 1 Ch. 43.

The L. P. Act, 1925, s. 74, contains provisions (sub-ss. (3) and (4)) relating to the mode of execution by an attorney of conveyances of property on behalf of a corporation; and by a corporation under a power of attorney on behalf of another person or corporation.

Filing in Central Office.

Section 125 of the same Act provides in reference to powers of attorney to dispose of or deal with any interest in or charge upon land, that the instrument creating the power or a certified copy thereof or of such portions thereof as refer to or are necessary to the interpretation of such power, unless it relates to a simple transaction and is to be handed over on completion, must be filed at the central office; or if it relates exclusively to land or a charge registered under the L. R. Act, 1925, then at the Land Registry. If the instrument relates to land or a charge partly registered and partly unregistered, then the instrument or certified copy must be filed at the central office and an office copy at the Land Registry.

Any purchaser whose title is affected by any such instrument is entitled to have an office copy delivered to him free of expense.

Infant Attorneys.

As a general rule both infants and married women may be appointed to act as attorneys: Co. Litt. 52 a.

Construction of powers of attorney.

As to the construction of powers of attorney, see *Bryant* v. *La Banque du Peuple*, [1893] A. C. at pp. 177 *et seq.*; *Jacobs* v. *Morris*, [1902] 1 Ch. 816.

Stamps.

As to the stamp on a power of attorney, see Stamp Act, 1891, Sched. I. tit., LETTER OR POWER OF ATTORNEY; amended Fin. Act, 1917, s. 30.

CLAUSES (*a*).

Appointment by one person of an attorney or attorneys.

1. I, A., of, &c., hby appt (*b*) B., of, &c., my atty [B., of, &c., C., of, &c., & D., of, &c., jointly & every two *or more* & each of them severally my attys & atty (*c*)] in my name (*d*) or on my behalf to [do or execute all or any of the acts & things hrinar mentd, that is to say (*e*)].

The same by several.

2. We, A., B., & C., of, &c., do & each & every of us doth hby appt D., of, &c., the atty [D., of, &c., E., of, &c., & F., of, &c., jtly & every two & every one of them sevlly the attys & atty] of us & of each & every of us in the names or name or on behalf of us & each & every of us, &c.

The same by a firm.

3. We, A. B. & C., of, &c., carrying on business in ptnp together as ——, under the style or firm of —— hby appt D., of, &c., the atty [D., of, &c., E., of, &c., & F., of, &c., jointly & every two or more & each of them severally the attys & atty] of us in the name of our firm or orwise on our behalf, &c.

To receive a sum of money.

4. To receive from K., of, &c., the sum of £——, [being the price agrd to be pd by him to me for the pchase of, &c.,] & all intt due or to become due in respt throf, & to give an effectual rect & discharge for the same.

To receive

5. To demand, sue for, enforce paymt of, & receive & give

(*a*) All these clauses are adapted to the case of a power of attorney expressed in the first person, which is the more usual form where there are no recitals.

(*b*) This and the following forms of appointment are adapted to the powers following which do not include powers coupled with an interest, for forms of which see Vol. 2, pp. 89, 212. Section 126 of the L. P. Act, 1925, is therefore inapplicable (see *ante*, p. 205, note), and where s. 127 of that Act is intended to apply, f. 31, p. 214, should be inserted at the end of the deed, leaving the form of appointment as above.

(*c*) A power given to several persons cannot be exercised by one or some only of them unless each and every two or more of them are appointed severally as well as jointly: Co. Lit. 181, b.; *Guthrie* v. *Armstrong*, 5 B. & Ald. 628, and see 54 Sol. J. 148.

(*d*) By the L. P. Act, 1925, s. 123, an attorney is authorised to execute any assurance or instrument in his own name, instead of in the name of the principal; but this is without prejudice to any statutory direction that an instrument is to be executed in the name of an estate owner. See as to the two modes of execution, *infra* Deeds.

(*e*) The words in this bracket will be inserted where, as is often convenient, the acts authorised are set out in numbered paragraphs.

effectual rects & discharges for all moys, secs for moy, debts, legacies, goods, chattels, & psonal este, of or to wch I am now or may hrafter become possed or entitled, or wch are or may become due, owing, payable, or transferable to me from any pson or psons or corporon. debts and personal estate generally.

6. To receive & give effectual rects & discharges for all & any moys wch shl come to the hands of the sd [attys or] atty by virtue of the powers hrin contd, wch rects (whether given in my name or in the [names or] name of the sd [attys or] atty) shl exonerate the pson or psons or corporon paying such moys from seeing to the applicon throf, or being responsible for the loss or misapplicon throf. To give receipts.

7. To deposit any moys reced by the sd [attys or] atty under or by virtue of these psnts with any banker, broker, or other pson in my name or in the [names or] name of my sd [attys or] atty, And to withdraw such moys or any moys wch are now deposited in my name or on my behalf with any banker, broker, or other pson, & to employ or apply all or any such moys in or about my sd business or any of the pposes afsd or orwise as may be thought fit, or from time to time to invest the same or any pt throf at discron in my name or in the [names or] name of the sd [attys or] atty or any other pson or psons in trust for me in or upon, *specified investments, or*, "any such stks, funds, shares, or secs as may be thought pper," & to receive & give good discharges for all divids, intt, & income arisg from any such investmts, & to vary, sell, assn, transfer, & dispose of the same or any pt throf. To deposit, employ, or invest moneys.

8. From time to time to pchase, take on lease or orwise acquire & hold all such houses, offices, bldgs, lands, ppty, chattels, & effects in —— afsd as shl be thought necy or expedient for or in relation to any of the pposes or objects afsd. To acquire lands, &c.

9. From time to time, if & when the sd [attys or] atty may think fit, to sell, exchange, surr, give up, mtge, charge, pledge, demise, lease, or dispose of any houses, offices, bldgs, lands or ppty of any tenure, or any chattels, or effects [in —— afsd], belonging to or held by me [includg power to sell or To sell, &c., real and personal estate (*a*).

(*a*) A more specific power would often be necessary or advisable. As to the necessity of filing the instrument or portions of the instrument containing any such power, see *ante*, p. 205, note. As to a power to sell a business, see *Hawksley* v. *Outram*, [1892] 3 Ch. 359.

dispose of any ppty wholly or partially in consn of a perpetual rent-charge, & subjt to any covts, exceptions, reservons, & restrictions wch may be thought fit, & to provide for the apportionmt of or indemnity agst rents or rent-charges affectg the ppty sold], & to transfer, release, or orwise deal with any mtges, charges, or secs, whether upon real or psonal ppty [in —— afsd], to wch I may be entitled, & also to exte or enforce any powers of sale (*b*) or other rts, powers, or remedies incident to any such mtges, charges, or secs as afsd, or orwise to realise & obtain the benefit throf in such mner as may be thought pper, & to assure or dispose of any estes wch may be vested in me as a tree or mtgee.

In connection with registered land (*c*).

10. From time to time to apply under the L. R. Act, 1925, for the registron of me, either alone or jtly with any other pson or psons either absolutely or provisionally as the proptor of freehd or leasehd land, either with or witht the mines & minerals thrunder (*d*), or of mines & minerals severed from the land, or of any incumbce or charge; or for registron of notice of a lease or agrmt for a lease (*e*); or of a restrictive covenant or any other right, interest or claim in respt of wch notice may be registered under that Act or under rules made psuant thrto (*f*); for lodging cautions agst first registron of land on the register (*g*); or agst dealgs with regrd land or a regrd charge (*h*); for inhibons agst any dealgs with regrd land or a regrd charge (*i*); for or for the withdrawal of restrictions agst transferrg or charging regrd land or a regrd charge (*a*); And in my name to exte transfers & charges of any regrd land, incumbce, or charge, & to discharge any incumbce or charge & to hand over any land certfe or

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(*b*) As to the importance of these words, see *Re Dowson & Jenkins*, [1904] 2 Ch. 219.

(*c*) In cases where the power authorises dealings with freehold land or leases having at least forty years to run (L. R. Act, 1925, s. 123), or mortgages, it will be expedient, if the land is situate in a compulsory district, to insert this clause. As to filing the instrument in which such a clause is contained, see *ante*, p. 205, *note*.

As to powers of attorney relating to registered land or a registered charge, see *ante*, p. 205.

(*d*) L. R. Act, 1925, s. 3 (viii), and s. 120.

(*e*) L. R. Act, 1925, s. 48.

(*f*) L. R. Act, 1925, ss. 49, 50, 59.

(*g*) L. R. Act, 1925, s. 53.

(*h*) L. R. Act, 1925, ss. 54–56, 59.

(*i*) L. R. Act, 1925, s. 57.

(*a*) L. R. Act, 1925, s. 58.

certfe of charge ; & also to apply to the Registrar to refer any question arisg upon the examinon of the title of any land for the opinion of the High Court (*b*), & to withdraw any applicon for registron with absolute title, or to request the Registrar to enter such qualified title on the register as he may approve, & to approve in my name of any entries framed or drawn by the Registrar for any such ppose as afsd, & to appeal to the Court from any order or decision of the Registrar ; AND also in my name to serve any notice reqd or authorised by the sd Act, or the rules thrunder, to be served, & to direct any address to be my address for service : AND generally, in my name & on my behalf, to apply for or consent to the makg of any entry or to the modificon, withdrawal, or discharge of any entry on the register kept under the sd Act, or for or to any other order, act, matter, or thing authorised to be applied for or consented to under the sd Act or rules.

11. To borrow from time to time such sums of moy & upon such terms as the sd [attys or] atty may think expedient for or in relon to any of the pposes or objects afsd, upon [my psonal secy or] the secy of any of my ppty (whether real or psonal) or orwise, & for such pposes to give, exte, & make such mtges, charges, pledges, or other secs, & with such covts, powers & provons as may be thought pper. To raise money on mortgage (*e*).

12. To manage or superintend the managemt of all the estes & ppty of whatever tenure of or to wch I am or shl become seised, possed or entitled, & to cut timber or underwood, & work quarries, mines, & minls (whether now open or in workg or not), upon any of the sd estes & ppty, & to erect, pull down, & repair houses or other bldgs, fences, & erons, & to drain, make roads on, or orwise improve any of the premes, & to dedicate To manage property (*f*).

(*b*) L. R. Act, 1925, s. 140

(*e*) See also the full powers of mortgaging and dealing with mortgages in Precedent VIII., p. 222. A power to mortgage, especially if it is to extend to pledging the credit of the principal, should of course be specifically given, if intended : see *Jonmenjoy* v. *Watson*, 9 App. Cas. 561 ; *Bryant* v. *La Banque du Peuple*, [1893] A. C. 170 ; *Jacobs* v. *Morris*, [1902] 1 Ch. 816. As to the right of the lender to recover money lent to an agent acting without authority, see *Reversion, &c., Co.* v. *Maison Cosway, Ltd.*, [1913] 1 K. B. 364. Power to mortgage.

(*f*) A steward of an estate, as such, has no power to contract to grant a lease : *Collen* v. *Gardner*, 21 Beav. 540. If he enters into a contract in his own name : *Higgins* v. *Senior*, 8 M. & W. 834 ; or, "as agent," *Collen* v. *Wright*, 8 El. & Bl. 647, which is outside his authority, he is personally liable to the other party to the contract : see *Yonge* v. *Toynbee*, [1910] 1 K. B. 215.

any roads when made to the public, & to insure houses & other ppty agst loss or damage by fire [or hostile aircraft], & to execute any works reqd by any public or local authority.

To manage trust estates (*g*).

13. And also to sell, convert, collect, get in, & exte & perfect insurances of, or manage or cultivate, or orwise administer any ppty real or psonal moveable or immoveable wch may be vested in me alone or jtly with any other pson or psons as a tree, exor, or admor, & to exte & sign any deeds or instrumts & generally to do any acts wch I could lawfully have exted, signed, & done in any such capacity.

To enter into agreements with tenants, and to collect rents, with ancillary powers.

14. To enter into agrmts for yrly, monthly, or weekly tenancies, to take effect in posson or within three calr months from the date throf, of all or any of my real or leasehd ppty situate in the parish of —— & coy of ——, or elsewhere, & to make allowces to & arrangemts with the tenants & occupiers for the time being of the sd ppty, & to accept surrenders of leases & tenancies, & to demand, sue for, collect & receive, & give effectual discharges for the rents & profits now due & henceforth to become due in respt of the same: And to take & use all lawful proceedings & means, by distress or action or orwise, for recoverg & receivg the sd rents, & for enforcg the pformce of any covts or agrmts wch the respective lessees or tenants may be liable to pform, & for evictg & ejectg or recoverg damages from tenants & occupiers makg default in paymt of such rents or in pformce of such covts or agrmts, & for obtaing & retaing posson of all or any of the premes occupied by any lessees or tenants makg such default.

To take and defend legal proceedings (*h*).

15. To commence, prosecute, enforce, defend, answer, or oppose all actions & other legal proceedings & demands touchg any of the matters afsd, or any other matters in which I am or may hrafter be interested or concerned, & also, if thought fit,

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(*g*) Trustees or personal representatives resident in England may delegate the management of property subject to the trust or forming part of the testator's or intestate's estate in any place outside the United Kingdom: T. Act, 1925, s. 23 (2).

(*h*) This would include bankruptcy proceedings: see *Ex p. Frampton*, 1 De G. F. & J. 263. Proceedings taken by the attorney ought to be taken in the name of the principal: *Jones* v. *Gurney*, [1913] W. N. 72. Under the combined effect of a clause like the above and clause 26, *post*, an attorney can obtain letters of administration with the will annexed on behalf of an executor absent from the country: see *In b. Barker*, [1891] P. 251. A. E. Act, 1925, s. 19.

to compromise, refer to arbitron, abandon, submit to judgmt, or become non-suited in any such action or proceeding as afsd.

To settle accounts, compromise, &c.

16. To adjust, settle, compromise, or submit to arbitron any accts, debts, claims, demands, disputes, & matters touchg any of the matters afsd, or any other matters wch are now subsistg or may hrafter arise betn me & any other pson or psons, or betn my sd [attys or] atty & any other pson or psons.

To compound with and make allowances to debtors.

17. To compound & accept paymt in lieu of & in satisfon for the whole of, or compromise any debt or sum of moy now or hrafter owing or payable to me, or any other claim or demand wch I have or may have agst any pson or psons or to grt an extension of time for the paymt or satisfon throf, upon such terms as may be deemed pper, either with or witht takg secy for the same, or orwise to act with respt thto as may be deemed expedient.

To vote at meetings (*a*).

18. To vote at the meetgs of any Co or Cos, & orwise to act as my proxy or repve in respt of any shares now held, or wch may hrafter be acquired by me thrin, & for that ppose to sign & exte any proxies or other instrumts in my name & on my behalf.

To employ agents.

19. To appt & employ any agents, overseers, recers, servants, or other psons at such remuneron by way of salary, commission, or orwise, as the sd [attys or] atty may think pper, & the same from time to time to dismiss & discharge, & any others to appt or employ in their stead, & to insure agst any liability to a workman arising under the Workmen's Compenson Act, 1906, or any Act amending the same.

To execute a specified deed (*b*).

20. As my act & deed to sign, seal, & deliver a certain indre already prepared & engrossed, or intd shortly to be engrossed, [a transfer] bearg or intd to bear date on or about the —— day of ——, & made or intd to be made betn, *pties*, & being

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(*a*) See *Colonial Gold Reef, Ltd.* v. *Free State Rand, Ltd.*, [1914] 1 Ch. 382.

(*b*) See T. Act, 1925, s. 23, (1) and (3). The solicitor appointed under sub-s. (3), which replaces s. 17 of the T. Act, 1893, must be appointed by the trustee himself or his specially authorised attorney: *Re Hetling & Merton*, [1893], 3 Ch. 269, 280. The solicitor employed by an attorney acting under a special power such as that in the text is regarded as the solicitor of the trustee. As to the meaning of "the solicitor," see *King* v. *Smith*, [1900] 2 Ch. 425. Trustees.

It may sometimes be useful, *e.g.*, where a misrecital has been discovered in the power of attorney (as to the effect of which see *Hersey* v. *Fox*, Litt. Rep. 143), to obtain the principal's confirmation by endorsement of a Confirmation by principal.

or intd to be, *insert short description of intended deed as*, "a convce of freehd & leasehd ppty, situate at, &c., & known as, &c., to K., by way of mtge for securg the paymt of £—— & intt, & to receive & give a discharge for the sd sum of £——."

To execute a transfer or charge of registered land.

21. As my act & deed to sign seal & deliver a transfer [a charge for £——] already prepared & intd to be dated the —— day of —— of [on] all the land of wch I am registered as proprietor with a —— title under the L. R. Act, 1925, under the heading District —— Parish —— Title No. —— to C. D. of &c.

To execute deeds, &c., generally.

22. To exte, sign, enter into, acknowe, perfect, & do all such [contracts, convces, leases, mtges, transfers, assnmts, surrenders, releases, reconvces, assurces], deeds, agrmts, instrumts, acts, & things as shl be requisite, or may be deemed pper for or in relon to all or any of the pposes or matters afsd.

To transfer land or other property abroad.

23. To sign, seal, exte, acknowe, & deliver in the sd, *foreign country, colony or province*, accdg to the laws for the time being in force there, such deed or deeds, instrumt or instrumts & notarial act or acts as may be deemed requisite or expedient for conveying & transferrg, or orwise effectually assurg to K., of, &c., or as he shl direct, *short description of ppty*, & also by the same or any other deed or deeds, notarial act or acts, instrumt or instrumts, to enter into such covts or agrmts as are usual accdg to the laws afsd for a vendor to enter into, or may orwise be reasbly reqd: AND also to do & exte such further acts & things as may be deemed expedient for recordg, registerg, or orwise completg & givg validity to such deed or deeds, notarial act or acts, or instrumt or instrumts accdg to the laws afsd.

To draw bills, &c.

24. To draw, accept, endorse (*a*), negotiate, retire, pay or satisfy any bills of exchange, promissory notes, cheques, drafts,

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deed previously executed by attorney, as follows:— "I the within named A. being now in England, hby ratify & confirm the exon of the within written indre by my atty B. for me & on my behalf. Dated, &c. IN WITNESS, &c."

As to the circumstances under which an adoption amounting to redelivery by the principal will be assumed of a deed executed by attorney under a power not sufficiently wide to authorise its execution, see *Re Seymour*, [1913] 1 Ch. 475.

(*a*) See *Hogg* v. *Snaith*, 1 Taunt. 347; *Esdaile* v. *La Nauze*, 1 Y. & C. Ex. 394.

orders for paymt or delivery of moy, secs, goods, or effects, bills of lading, or other negotiable or mercantile instrumts or secs, wch may be deemed necy or pper in relon to my business or affairs (*b*).

25. And generally to act as my [attys or] atty or [agents or] agent at —— afsd, in relon to the premes & all other matters (*c*) in wch I may be interested or concerned, & on my behalf to exte & do all instrumts, acts, & things as fully & effectually in all respts as I myself could do if psonally psnt. To act generally.

26. From time to time to appt & remove at pleasure any substitute or substitutes as atty or agent [attys or agents] under [them or] him in respt of all or any of the matters afsd upon such terms & at such salaries or remuneron as [they or] he shl think fit. To appoint substitutes (*d*).

27. Provd always that this psnt power of atty shl not extend to revoke or make void or affect any former or other power or powers of atty by me at any time htofore given or delegated to any other pson or psons whomsr for any distinct or other ppose or pposes, but such other power or powers shl remain & be of the same force & effect as if these psnts had not been exted. Proviso keeping alive powers of attorney given to other persons for other purposes.

28. And in case of the death of the sd *atty*, or of his inability (whether permanent or temporary) or unwillgness through absence, illness, or orwise, to act as my atty in relon to the matters afsd or any of them, then I hby appt, *substitute*, of, &c., to act as my atty in the stead of the sd *atty*, after his death or durg such inability or unwillgness, & in the latter case either permanently or from time to time durg the subsistce of any such inability or unwillgness (as the case may be), unless & until these psnts shl be revoked or orwise determined, in like mner as if the name of the sd, *substitute*, had been inserted in these psnts instead of the name of the sd *atty*. Substitution of another attorney in case of death, &c. (*e*).

(*b*) Where a general power of borrowing is not intended to be conferred, care must be taken to limit the power to the particular purpose for which it is to be exercised: *Jacobs* v. *Morris*, [1902] 1 Ch. 816.

(*c*) These general words on the principle of *ejusdem generis* would be restricted by the context, see *Hogg* v. *Snaith*, *sup.*

(*d*) As to this power, see *Palliser* v. *Ord*, Bunbury's Rep. 166.

(*e*) This clause is intended for a case in which only one attorney is appointed. In the case of a joint and several power to two or more, it would not, of course, usually be required.

Ratification clause.

29. And I hby for myself, my hrs, exs, & ads, ratify & confirm, & agree to ratify & confirm whatsr my sd [attys or] atty [or any substitute or substitutes actg under [them or] him] shl do or purport to do by virtue of these psnts, *if the atty is to act in a distant country, add,* "includg in such confirmon, whatsr shl be done betn the time of my death or the revocon by any other means of this power of atty & the time of such death or revocon becomg known to my sd [attys or] atty or [their or] his substitute or substitutes."

To register power abroad.

30. And I hby authorise & empower the sd [attys or] atty to acknowe in my name, & as my act & deed, this power of atty, & to register & record the same in the pper office in the sd colony [province] & to procure to be done any & every other act & thing whatsr, wch may be in anywise requisite or pper for authenticatg & givg full effect to this power of atty, accdg to the laws & usages of the sd colony [province].

Power to be irrevocable (*f*).

31. And I hby declare that this power of atty shl be irrevocable for —— calr months from the date hrof.

PRECEDENTS.

I.

TO Execute Conveyance *to* Purchaser, *and receive* Purchase-money.

KNOW ALL MEN that I, A., of, &c., *Apptmt of atty,* p. 206 : *to receive the pchase-moy, & give receipts for the same,* pp. 206, 207 : *to execute the convce or transfer,* p. 212 : *ratificon,* p. 214 : [*Power to be irrevocable,* p. 214.] In witness, &c.

(*f*) See L. P. Act, 1925, s. 127, *ante,* p. 205, note, and note 206 (b).

II.

BY *a* FIRM *of* TRADERS *to raise* MONEY *on* MORTGAGE *of a* PLANTATION *in the* COLONIES.

KNOW ALL MEN, that we, &c., *Apptmt of attys*, p. 206, to borrow such sum or sums of moy, not exceedg in the whole the sum of ——, & at such rate of intt not exceedg £—— p.c. p.a., for such period & on such terms in other respts as our sd attys or atty may think fit, AND TO secure the repaymt throf with intt by a mtge of, *short description of pcels*, & the crops, produce, live & dead stk, utensils, machy, plant, effects, & ppty now or at any time hrafter in upon or belongg to the sd planton & premes or any pt or pts throf resply, & for the pposes afsd, *to give rects*, p. 207: AND FURTHER for the pposes afsd, *to exte assurce of land, crops, &c.*, p. 212, to the pson or psons advancg such sum or sums of moy, or as he or they shl direct, by way of secy as afsd, with such covts as may be usual accdg to the laws in force in —— afsd for mtgors to enter into, or may be reasbly required, includg covts for repaymt of the sum or sums of moy to be advced as afsd & the intt for the same, & such powers of sale & other powers & provons in favour of the mtgee or mtgees as our sd attys or atty may deem necy or expedient: AND TO exte & do all such other instrumts, acts, & things as may be thought pper for effectuatg & perfectg any such mtge or secy as afsd, or orwise in relon to the premes. *Ratificon*, p. 214. [*Power to be irrevocable*, p. 214, (*a*)]. [*To register power abroad*, p. 214.] IN WITNESS, &c. (*b*).

To borrow.

Mortgage.

Enter into covenants.

Execute deeds.

(*a*) Where the power is to be exercised in New South Wales or Queensland, say, "And I hby declare that this power of atty shl remain in force until notice of my death or of my having revoked the same shl have been reced by my sd [attys or] atty"; see 1 Edw. 7, No. 37, s. 14, and First Schedule of New South Wales; *Mutual Provident, &c., Socy.* v. *Macmillan*, 14 App. Cas. 596; 31 Vict. No. 36, s. 2 of Queensland. In Victoria any act done by an attorney is valid until the death of the constituent or the revocation of the power is registered; see Victoria Statutes, 54 Vict. 1103, s. 196. As to powers of attorney in Nova Scotia, see Revised Statutes, Tit. XXI. c. 84, s. 15; in the Orange Free State, see the Statute Laws of the Orange River Colony, Ch. LVIII, ss. 35, 36, and South Africa Act, 1909, ss. 6, 135.

(*b*) In some places a power of attorney to do an act in a public office is retained in the office; and where this is the case it may be proper to execute

Execution of

III.

TO LET *and* MANAGE HOUSE PROPERTY.

To settle with superior landlord. Insure.

KNOW, *&c., Apptmt of atty*, p. 206: *to enter into agrmts for yearly tenancies & to collect rents with ancillary powers*, p. 210: AND ALSO for me & in my name, to settle all accts betn me & my superior landlords, or any of them, & to pay all such sums of moy as shl from time to time be due from me to them or any of them: AND TO effect insces agst loss or damage by fire of all or any houses, bldgs, or insurable ppty on my sd este & premes, & to pay the premiums & moys payable for effectg & keepg up such insces: *to take & defend legal proceedings*, p. 210: *to arrange and compromise*, p. 211: *ratificon*, p. 214. [*Power to be irrevocable*, p. 214.] IN WITNESS, &c.

IV.

BY LEGATEE ABROAD *to* PERSONS *in* ENGLAND *to* RECEIVE *a* LEGACY AND SHARE OF RESIDUE (*c*).

KNOW ALL MEN that whas: *Recite will of K., givg a legacy of* £—— *& vhare of residue to A., and apptg L. & M.*

powers for use abroad.

the power in duplicate. It would usually be sufficient for the execution of a power to be used in the Colonies to be attested by two witnesses, one of whom should depose before a mayor having a corporate seal, or a notary public having general jurisdiction, to the execution thereof in the presence of himself and the other witness; but in the case of foreign countries, and also, it is believed, in some of the Colonies (see 14 Encycl. Prec., pp. 223, 224), special formalities may be desirable, if not necessary, for authenticating the power; as to which information may be obtained from the Colonial agents or a notary public, or in the case of a foreign country from the consulate. For a form of such a declaration, and the verification thereof, see *post*, *sub tit.* "DECLARATIONS STATUTORY." As to the execution of powers in Germany, see *Re Schmidt*, 31 Sol. J. 234, 248.

Foreign powers.

(*c*) Under a foreign power of attorney, even if in a foreign language and in foreign form, which is intended to be acted on in England, the extent of the authority, so far as transactions in England are concerned, must be determined by English law: *Chatenay* v. *Brazilian, &c., Co.*, [1891] 1 Q. B. 79. It is sometimes necessary, and generally (if the case admits) expedient, that a power which is to be used in a country where different laws prevail (and especially if the language is different), should be according to the forms in use in that country. As to the authentication of such a power, see note (*b*), last page.

exs ; death & probate : NOW I the sd A. hby *continue apptmt of B. & C. attys*, p. 206, to demand, sue for, & recover of & from the sd L. & M., as such exs as afsd, or either of them, or other the pson or psons by whom the same may be payable, the afsd legacy of £—— so bequeathed to me as afsd, & also the share of the residy este of the sd K., to wch I am entitled as afsd : AND TO accept any pt of the residy este of the sd K. in satisfon either wholly or in pt of such legacy & share as afsd : AND TO give effectual rects & discharges for the same resply, & to exte such releases as may be reasbly reqd in relon thto : AND ALSO in my name & on my behalf, if the sd. attys or atty shl be reqd & think pper so to do, to exte any bond or covt for the repaymt of the sd legacy & share of residue, or either of them, or of a due proportion throf resply, in case the este & effects of the sd K. shl subseqtly to the paymt throf resply, prove insuffit for paymt of the debts of the sd K. & the legacies bequeathed by his will : AND ALSO, if it shl seem expedient so to do, to take & prosecute any legal proceedings for recoverg paymt of the sd legacy or share of residue, or for the admon of the este of the sd K., or orwise in relon to the premes : AND ALSO, if deemed necy, for & in my name to apply for & obtain letters of admon to the este & effects of the sd K., & to exte & do all such instrumts & acts as may be necy or pper in that behalf, or orwise in relon to the premes : AND UPON obtaing such letters of admon, for & in my name, to do & exte all such acts & things as shl be necy or requisite in or about the gettg in & administerg the este & effects of the sd K. *To arrange & compromise*, p. 211. *To act generally*, p. 213. *To appoint substitute*, p. 213. *Ratificon*, p. 214. [*Proviso keepg alive powers given for other pposes*, p. 213.] [*Power to be irrevocable*, p. 214.] IN WITNESS, &c. (*a*).

To obtain payment.

Give receipts.

Give indemnity.

Take legal proceedings.

Take out letters of administration.

Administer.

(*a*) For declaration verifying execution and verification, see DECLARATIONS, STATUTORY.

V.

TO *take out* ADMINISTRATION *with* WILL ANNEXED *in* INDIA (*b*).

To take out letters of administration (*c*).

KNOW ALL MEN, &c., *Recite will of K., apptg A. & B. exs. & devisg mtge estes to them : Death & probate in England by A. & B. :* NOW WE, *Apptmt by A. & B. of C., D., & E., attys or atty,* p. 206, to apply for & obtain from the pper Court or Courts, office or offices in India, letters of admon with the sd will annexed, limited to the movable & immovable ppty of the sd testor there situate or recoverable, or orwise to procure themselves or himself to be constituted, either as our attys or atty or orwise, the admors or admor of the sd ppty, or the legal repves or repve of the sd testor in India : AND FOR this ppose,

Execute bond.

as our act & deed, to exte & deliver such bond, covt, recognisance, or other obligon as may be reqd upon the grant of such letters of admon or orwise, *& also to receive debts & psonal este,* " movable & immovable ppty wch now, or at any time hrafter, may belong to, or form pt of the este of the sd K," p. 206 :

Receive rents.

AND ALSO to take & retain posson or receive the rents & profits of any ppty in India wch shl become vested in us or the sd C., D., & E., or any or either of them, by virtue of such devise & grant of letters of admon as afsd, or either of them, & to exercise all such powers in relon to such ppty as may be vested in us :

Execute reconveyances.

AND UPON paymt of the moys secd to the este of the sd K., to exte such reconvces or releases of mtge estes as may be reqd,

Pay debts.

& to pay all debts due from the este of the sd testor to any pson resident in India : *general power to give receipts,* p. 207 : *to arrange & compromise,* p. 211, *clause* 16, *omittg the words after the word* " arise " : *to compound with & make allowces to debtors,*

(*b*) See the Indian Succession Act, 1865, s. 242, Act XIII. of 1875, Act II. of 1877, and Act VI. of 1881 : *Craster* v. *Thomas,* [1909] 2 Ch. 348. As to stamps on powers of attorney in India, see Act II. of 1899, Sched. I., 48 (power of attorney), repealing Act I. of 1879, and Sched. II. of Act II. of 1899. The Courts in India do not consider whether powers of attorney issued in England, and intended to operate in India, comply with the stamp laws in England, see *In b. McAdam,* I. L. R. 23 Calc. 187 ; and see further as to India, 1 Dav. Prec., 5th ed. 403, note ; 3 *ib.* 3rd ed. 960 ; 40 Sol. J. 456.

(*c*) The same purpose may be effected by a more general power to appear in any court, &c., see *In b. Barker,* [1891] P. 251.

p. 211 : *to take & defend legal proceedings*, p. 210 : *to execute deeds, &c., generally*, p. 212 : *to appoint substitutes*, p. 213 : *to act generally*, " as we, as such exs & devisees as afsd, could do," p. 213 : *ratificon*, p. 214 : *to register the power in India*, p. 214. [*Power to be irrevocable*, p. 214.] IN WITNESS, &c. (*d*).

VI.

TO *apply for the* RESEALING *in a* COLONY *of* PROBATE *of a* WILL, *and to* ADMINISTER *the estate locally* (*a*).

KNOW ALL MEN that whas, *Recite will of K., apptg A. & B. exs & trees, & devising & bequeathing his real & personal este to them upon trust for sale & convon, & after paymt of funl &c expses & debts, to pay the residue to L : Death & probate in England by A. & B. :* NOW WE the sd A. & B., *apptmt by A. & B. of C., atty*, p. 206, to do the follg acts & things or any of them :

To apply for re-sealing in the colony.

1. To APPLY to the Supreme Court or other the proper Court in —— to have the probate of the sd will sealed with the seal of that Court to the intent that the same may have full force & effect in —— psuant —— to the —— Ordinance 18 —— (*aa*) & to enter into all such obligations, undertake all such liabilities & exte all such deeds (if any) as may legally be reqd for that ppose.

To receive debts and personal estate in the colony.

2. To DEMAND, sue for, enforce paymt of & receive & give effectual rects & discharges for all moys, secies for moy, debts, goods, chattels & movable ppty wch now or at any time hrafter may belong to or form pt of the este of the sd testor in ——.

To sell and convert personal estate.

3. To SELL & convert into moy any such secies for moy, goods, chattels & movable ppty as may be recd by the sd atty under the foregoing pwrs in that behalf at such times, at such prices & subject to such condons as the sd atty shl think fit, & upon any such sale to receive & give effectual rects & discharges for the conson moys recd by the sd atty in respect throf.

(*d*) See *ante*, p. 215, note (*b*). The practice is to execute in the presence of a notary.

(*a*) See the T. Act, 1925, s. 23 (2). Powers of attorney may often be conveniently paragraphed as in this and some of the subsequent forms.

(*aa*) In most British posessions, local statutes or ordinances have been enacted or promulgated to provide for the re-sealing of a grant of probate made by a Court in the United Kingdom.

To pay debts, &c.

4. To PAY all the funl & testy expses & debts of the sd testor due & payable in ——, & all costs, charges & expses incident to the exse of any of the pwrs hrin contd.

To compound with and make allowances to debtors.

5. To COMPOUND or accept paymt in lieu of or in satisfaction for the whole of or compromise any debt or sum of moy now or hrafter owing or payable to the este of the testor upon such terms as the sd atty may deem pper.

To pay or transfer residue to person entitled.

6. To PAY or transfer to the sd L. the net residue of the este of the sd testor wch shl remain in the hands of the sd atty after paymt of all such funl & testy expses, debts, costs, charges & expses as afsd, & to exte, sign, perfect & do all such transfers, deeds & things as may be necessary for that ppose.

7. *To appoint substitutes*, p. 213.

To act generally.

8. GENERALLY to act as the atty or agent in —— of us & each of us in relation to the premes & all other mres in wch we or either of us may be concerned or interested as afsd & on our behalf & on behalf of each or either of us to exte & do all instruments, acts & things as fully & effectually as we or either of us as such exs & trees as afsd could do.

To register power in the colony.

9. To PROCURE the registration of this pwr of atty if & whenever the registration throf may be legally reqd, necessary or convenient in the pper office in ——, & to procure to be done any & every other act & thing whatsr wch may be in any wise requisite or pper for authenticating & giving full effect to the same accdg to the laws & usages of ——.

Ratification clause.

10. AND each of us hby ratifies & confirms & agrees to ratify & confirm whatsr the sd atty or any substitute or subsititues acting under him shl do or purport to do by virtue of these psnts including in such confirmon whatsr shl be done between the time of his death or the revocon by any other means of this power of atty & the time of such death or revocon becoming known to the sd atty or his substitute or substitutes.

IN WITNESS, &c.

VII.

TO COMPLETE *a* PURCHASE.

Recitals.

KNOW ALL MEN that whas I A., of, &c., *pchaser*, have lately contracted with X. of —— to pchase certain —— & ppty

in the parish of ——, & coy of ——, known as the —— este, for the sum of £——, but the sd pchase has not yet been completed : And whas I am about to go abroad : NOW I, the sd A., hby, &c., *Apptmt by A., of B., as atty*, p. 206.

1. To make or take such requons or objons as to the title or evidce of title to the sd este & premes, or orwise in relation thto, as the sd atty shl think fit. To make requisitions.

2. To insist upon any such requon or objon, or to withdraw or abandon the same wholly or partially, & either absolutely or upon the terms of receivg an indemnity or compenson or orwise, as the sd atty shl think fit. Insist on or withdraw requisitions.

3. In case any error, misstatemt, or omission in the parlars or description of the premes shl be discovered, to enter into such agrmt as to receivg or allowg compenson as the sd atty shl deem pper. Arrange for compensation.

4. In the event of the sd atty takg or makg any objon or requon in respt of the title or orwise wch the vendor shl neglect or refuse to remove or comply with, or in the event of any default on the pt of the vendor in specifically performg the sd contract, then & in any such case, if the sd atty shl so think fit, either to rescind the contract & to demand the return of & sue for & recover & give a rect for the deposit of £——, pd by me, upon the exon of the sd contract, or to take legal proceedings for determing the validity of any such requon or objon as afsd, or for recoverg damages in respt of such default as afsd, or for enforcg specific pformce of the contract or orwise in relation thto as circes may require or the sd atty may think fit. Rescind contract or take legal proceedings.

5. To defend any legal proceedings wch may be taken by the vendor to recover damages agst me for alleged nonpformce of the sd contract, or to determine the validity of any such objon or requon as afsd, or to enforce the specific pformce of the sd contract by me, or orwise in relation to the premes. Defend legal proceedings.

6. To submit to arbitron, compromise, or abandon any such proceedings wch may be taken by or agst me as afsd, or any question or dispute in relation to the premes. Arbitration.

7. To accept & take a pper assurce or assurces from the vendor & all other necy pties of the sd —— & ppty : And to accept, exte, or enter into & do, in my name or on my behalf, any assurces, deeds, covts, instrumts, & things wch may be deemed necy to or pper for completg the sd pchase, or in relation thto. Conveyance and completion.

Insert where registration is compulsory.

[**8.** To APPLY (*b*) at the Land Registry Office for registron of me the sd A. as the proptor of the sd —— & ppty, & if on such applon I shl be regrd with possessory title, subseqtly to apply for registron of me the sd A. as proptor throf with absolute title, with power in my name to withdraw such applicon, or to make a requon in writg to the Registrar to enter me as proptor, with such qualified title as he may approve, & to approve of such entries for the register as shl be drawn or framed by the Registrar.]

9. *To appoint substitutes*, p. 213.

Substiton of another attorney on death, &c., of B., p. 213. *Ratificon*, p. 214. [*Power to be irrevocable*, p. 214.]

IN WITNESS, &c.

VIII.

GENERAL POWER *of* ATTORNEY *to* MANAGE PROPERTY *and* CARRY *on* BUSINESS *in* ENGLAND, *with* FULL POWERS *of dealing with* MORTGAGES (*c*).

KNOW ALL MEN, &c., *Apptmt of B. as atty*, p. 206 : *to manage ppty*, p. 210 : *to enter into agrmts with tenants, &c.*, p. 210 : *to sell, &c.*, p. 207 : AND ALSO to mtge or charge all or any pt or pts of my ppty, whether real or psonal, for the ppose of raisg any sum or sums of moy, wch the sd atty may think fit, for discharging or reducg all or any of the charges & incumbces thron, or any charges or incumbces wch may have been created under the psnt power, & wch shl for the time being be subsistg, or any pt or pts throf resply, or for the ppose of consolidatg any such charges or incumbces, or by way of secy for any such mtge dcbt or debts, either in addon to or in substiton, wholly or in pt, for any then subsistg secy or secs

Power to mortgage.

(*b*) See *ante*, p. 208, f. 10.

(*c*) See as to registered land f. 10, p. 208, and notes thereto. This Precedent is adapted to the case of a person going abroad. Such a power, if not limited in duration to the principal's absence, would not (at any rate as to persons without notice) be revoked by his return ; *secus* if *ex facie* so limited : *Danby* v. *Coutts*, 29 Ch. D. 500. If desired, it can be made irrevocable under the L. P. Act, 1925, s. 127, for any fixed time not exceeding one year, see *ante*, p. 205, note, so as to afford full protection to purchasers for value dealing under it ; but where there is real estate which may have to be dealt with by sale or mortgage, &c., it is sometimes better to have a trust deed instead of a power of attorney : see form, *post, sub tit.* "LEASES" (MINING).

As to power of attorney by person going abroad.

for the same, or for orwise effectuatg any of the pposes of these psnts: And to make any such mtge as afsd, with such powers & provons as he shl think pper: And to concur in or consent to the transfer of any mtges, charges, or secs affectg all or any pt or pts of my ppty, whether real or psonal, to any pson or psons, whether as pt of an arrangemt for the consolidon of any such mtges, charges, or secs, or orwise: And to consent to or allow any alteron in the rate of intt upon any such mtges or charges, or the terms of repaymt or redmon, & to allow any arrears of intt upon such mtges or charges to be capitalised & carry intt, & to authorise the release of any of the secs for any mtge debt or debts: And to insert in any deed or instrumt for effectg any such transfer or consolidon or other arrangemt as afsd, such powers or provons by way of further secy to the transferee or transferees, or mtgee or mtgees, or orwise as may be deemed pper, & generally to enter into or concur in such arrangemts in relation to the incumbces for the time being affectg my ppty, whether real or psonal, or orwise to deal with such incumbces, in such mner & with the like powers, authorities, & discrons in all respts as the sd atty might have done if he were absolutely entitled to the sd premes; *to arrange & compromise*, p. 211: *to compound with & make allowces to debtors*, p. 211: *to take & defend legal proceedings*, p. 210: *to give receipts*, p. 207: *to deposit & invest moys*, p. 207: *to vote at meetgs*, p. 211: And also to carry on, manage, & conduct my trade or business of —— at —— or elsewhere for such time & in such mner as my sd atty shl in his sole discron consider advisable: And with full power to my sd atty for the ppose of enablg him to carry on, manage, & conduct the sd business as afsd, to use & occupy the house & office in wch the same is now or shl for the time being be carried on (the rent (if any), rates, taxes, & outgoings payable in respt whrof, shl be charged to the acct of the sd business): And for the like ppose to use & dispose of all the capl, credits, stk, & effects wch now are or shl hrafter be employed in, or due or owing in respt of my sd business: And also to exte any works required by a public or local authority to be exted in respt of the house or office & to pay for the same at his discron out of the capital or income of the sd business: And also with

To concur in transfers of mortgages.

General powers of dealing with mortgages.

To carry on business.

To use offices.

To dispose of capital and effects.

To employ and

dismiss clerks, &c.

power for my sd atty to continue to employ such clerks, agents, servants, & other psons as now are employed in or about the sd business, & to hire & employ such other psons for the same or the like pposes or duties, & at such salaries as he shl think pper, & from time to time to dismiss any of such clerks, agents, servants, & other psons as he shl think fit, & to increase & diminish the number of psons employed in the sd business: *to insure servants*, p. 211; *to draw bills, &c.*, p. 212: AND ALSO with full power for my sd atty to enter into such contracts respectg the sd business as he shl think expedient: AND to adjust & settle all accts & transons, & compromise or compound any debts or claims wch may be owing by or to me or be claimed or made agst or on behalf of me in relation to the sd business: AND with power also for my sd atty from time to time to augmt or diminish the capl employed in the sd business as the exigencies throf may appear to require: AND ALSO with full power, if deemed expedient, at any time to discontinue, wind up, or dispose of the sd business in such mner as he shl think pper: AND generally to transact & do all matters & things respectg the sd business in the same mner in all respts as I myself could do: [AND ALSO to apply such pt of my net annl income as may from time to time be considered necy or pper for the expses of the establishmt at my residce at ——; & the maintce of my family & the members of my househd, or orwise to incur such expenditure in that behalf as may be deemed pper, & so that as to the extent & scope of such expenditure my sd atty shl have the fullest discron & freedom from responsibility, & his authority in this behalf shl not be revoked or in any mner affected by the happeng of any event other than my death or the express revocon by me of this power by writg notified to him (*a*)]: *to execute deeds*, p. 212:

To enter into contracts.

To settle accounts, &c.

To augment or diminish capital.

To wind up.

To act generally.

To keep up establishment.

Lunacy of principal.

(*a*) The clause in brackets is intended to meet the case where the head of a family may probably become temporarily incapacitated from attending to business. As to dealings under a power of attorney in case of the lunacy or incapacity of the principal, see *ante*, p. 204, note; and under the Roman-Dutch Law which prevails in Natal, *Molyneux* v. *Natal Land, &c., Co.*, [1905] A. C. 555; and see South Africa Act, 1909, s. 135. The power may be made irrevocable for a year under the L. P. Act, 1925, s. 127; see *ante*, p. 205, note. Sometimes the power is extended to keeping up charitable subscriptions, &c.

power to act generally, p. 213 : *to appoint substitutes*, p. 213 : *substiton of another atty on death, &c., of B.*, p. 213 : *ratificon*, p. 214. [*Power to be irrevocable*, p. 214.] IN WITNESS, &c. (*b*).

IX.

GENERAL POWER *of* ATTORNEY *by a* PERSON *going* ABROAD *for a short time. Very short* FORM (*c*).

KNOW ALL MEN, &c., *Apptmt of atty*, p. 206.

1. To DRAW cheques on my acct current with Messrs. —— & to sign my name thto. — To draw cheques.

2. To ENDORSE or sign my name to any cheques, dividend or intt warrants, or other instrumts payable to me. — To endorse cheques.

3. To GIVE, renew, or withdraw authorities or dirons to my bankers & other psons or corporons as to the psons, companies or corporons to whom, or the mner in which any moy payable to me periodically or orwise shl be pd. — To give directions as to payment of dividends, &c.

4. To DEMAND, sue for, & receive or prove in any bkptcy, liquidon, composon, windg up or admon for any moy, chattels, or other ppty now or hrafter belongg or coming to me. — To receive money or other property, &c.

5. To LET & manage all freehd & leasehd ppty now or hrafter belongg to me or pchased by my atty, & receive & enforce paymt of the rents throf. — To let and manage estates.

6. To SETTLE, compound, submit to arbitron or compromise any accts, disputes, claims, actions or proceedings in wch I may be concerned, & pay any moy due, or wch my atty may consider due, from me. — To settle accounts, &c., and pay debts.

(*b*) A precedent for the management of property in the Colonies can readily be adapted from this; the variations will depend upon the usual course of business in the Colony; the power to register, p. 214, should be added. As to the mode of authenticating powers to be acted upon in the Colonies, see *ante*, p. 216, note. — Power to act in Colonies.

The capacity of a person to contract in regard to land situate in a Colony is governed by the *lex situs*, and a power to carry into effect a contract void for want of capacity is of course ineffectual: *Bank of Africa, Ltd.* v. *Cohen*, [1909] 2 Ch. 129. — *Lex situs* governs capacity to contract in regard to land.

(*c*) As to registered land, see f. 10, *ante*, p. 208, and notes thereto.

If the principal has stocks transferable at the Bank of England, he should give a power in the Bank form for receipt of dividends or sign the Bank's form of request for transmission of dividends to the attorney. — Stocks transferable at Bank.

To employ agents. **7.** To EMPLOY agents for any of the pposes afsd, & to remunerate them for their services.

To invest. **8.** To INVEST any moys reced under this power in the pchase or on the secy of freehd or leasehd ppty, or in stks, shares, bonds, or debentures of companies, municipal corporons, or public bodies, & to sell or vary such investments.

To give receipts, &c. **9.** To GIVE rects, releases, & indemnities for or relatg to any moy or other ppty, pd delivered or transferred to my atty.

IN WITNESS, &c.

X.

GENERAL POWER *of* ATTORNEY *by a* TRUSTEE *going* ABROAD *for more than one month* (*a*).

KNOW ALL MEN that whas I, A. of, &c., *trustee*, am one of the trees of a settlmt dated, &c., & made, &c., *or* the Will, dated, &c., & proved, &c., of X. who died on the —— day of ——, 19— the prsnt trees whrof other than myself are B. of —— and C. of —— AND WHAS I am about to go abroad with the intention of remaining out of the United Kingdom for more than one month & am desirious of delegatg durg my absence abroad the trusts, powers, and discretions vested in me as such tree to D., of —— (*b*). NOW I the sd A. hby appt the sd D. to be my atty to act for me & on my behalf & in my name or orwise in the execution of the trusts of the sd settlmt [Will] & in the exercise of the powers & discretions thrby conferred jtly with the sd B. & C., or other the pson or psons for the time being a tree or trees throf jtly with me: AND on my behalf & in my name or orwise to

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(*a*) See Preliminary Note, *ante*, p. 202. The power will not come into force until the donor is out of the United Kingdom, and will be revoked by his return. T. Act, 1925, s. 25 (2). For form of statutory declaration by the donor to accompany the power, see *post*, *sub tit.* "DECLARATIONS, STATUTORY."

(*b*) In the case supposed in the text either B. or C. might have been appointed A.'s attorney, but not, apparently, both of them. A person who is the only other co-trustee, not being a trust corporation, cannot be appointed: see T. Act, 1925, s. 25 (1). There appears to be no objection where the power is given by a tenant for life of a settlement of real estate to the appointment by the tenant for life of one of the trustees of the settlement as his attorney.

exte & do all deeds, documts, acts & things required to be done in the exon or exercise of the sd trusts, powers & discretions, or any of them, as fully & effectually as I as such tree as afsd could have exted or done the same.

In Witness, etc.

XI.

GENERAL POWER *of* Attorney *to* Manager *of* Bank *in* Colony.

KNOW ALL MEN that the Bank of —— havg appted A., of, &c., colonial manager of the sd Bank in the colony [province] of ——, & being desirous of investg the sd A. with the powers & authorities hrinar mentd Hereby appoints *continue apptmt of A. as atty of the Bank*, p. 206, in the sd colony [province] (*d*) of —— for & in the name & on behalf of the sd Bank, to have & exte all & singr the powers & authorities hrinar mentd (that is to say), Recital. Appointment of attorney.

1. To direct & superintend the business & affairs of the sd Bank in the sd colony [province] & all branches & agencies of the sd Bank wch are or shl hrafter be opened or established in the sd colony [province]. To superintend business.

2. To visit all branches & agencies of the sd Bank, & to inspect & examine, & if the sd atty shl think pper, to take temporary or permanent posson, as the case may be, of the cash & secs for the time being at any such branch or agency as afsd, & all the books, accts, deeds, papers, & vouchers relatg to the transons throf, & generally to inform himself of all matters & things in any way connected with the operons & dealgs of such branches & agencies as afsd: And the sd Bank hby directs & requires the respective managers, accountants, Inspect branches.

(*d*) As to the different groups of colonies, see 2 Anson's Law and Custom, p. 65. The law of the particular colony as to registration of the power of attorney must be borne in mind. New Zealand is now described as "The Dominion of New Zealand," Australia as "The Commonwealth of Australia," Canada as "The Dominion of Canada," and the South African Colonies as the "Union of South Africa."

clerks, & all other officers of or attached to such branches & agencies as afsd, to communicate to the sd atty all such informon as he may think pper to require, & to lay open to him all the accts, vouchers, deeds, letters, & papers whatsr in their posson or power, relatg to any of the dealgs of such branches & agencies resply, & to deliver to the sd atty upon his demand all such books, accts, vouchers, deeds, letters & papers as afsd, & also all cash, bills, notes, & secs in their or his custody or power, belongg to the sd Bank.

Give orders as to branches.

3. To GIVE such orders & dirons in regard to the conduct or managemt of such branches & agencies as afsd, as to the sd atty shl seem expedient.

Suspend servants.

4. To SUPERSEDE or suspend any such manager, acctant, clerk, or officer as afsd, for such cause or reason as the sd atty may in his sole discron think sufft, with or witht assng any cause or reason, & either absolutely or for such time as he may think pper.

Revoke powers of servants.

5. To REVOKE or make void, suspend or vary all & every or any the powers & authorities wch have been or may hrafter be given to or vested in any of the managers or other officers of such branches & agencies as afsd, by or on behalf of the sd Bank.

Appoint new servants.

6. To APPT any new manager or managers, accountant or accountants, clerk or clerks, or other officer or officers, [& to insure the same subjt to the provons of any law for the insurce or compenson of workmen in force in the sd colony [province]] as the sd atty may think necy or pper, & to appt the same either in the place or stead of any manager, accountant, or officer who may have been superseded or suspended as afsd, or in addon to the then existg staff or orwise, & at such rate of remuneron & upon such terms as the sd atty may think reasble : PROVD ALWAYS that any & every such apptmt shl be subjt to approval & confirmon by the Board of Directors of the sd Bank in London, & every pson or psons to be so appted shl hold office subjt in all respts to such approval & confirmon.

Subject to confirmation.

Give powers.

7. To GIVE to & vest in any manager, accountant, or other officer of any such branch or agency as afsd, whether newly appted or not, such powers & authorities as the sd atty may deem necy or expedient.

8. *To receive debts & psonal este,* p. 207, *omittg the word* "legacies."

9. *To arrange & compromise disputes, &c.,* "betn the sd Bank & any pson or psons in the sd colony" [province], p. 211.

10. *To compound & make allowces to debtors,* p. 211.

11. *To take & defend legal proceedings,* p. 210.

12. To ACT on behalf of the sd Bank in all matters incident to or arisg out of the bkptcy or insolvency, or any composon or arrangemt with the credors of any pson or psons indebted or under liability to the sd Bank or claimed so to be, or in the windg up of any Company so indebted or under liability or claimed so to be. Deal with debtors.

13. *To acquire land,* p. 207, "for the purpose of managing, conductg, & carryg on the affairs, concerns, & business of the sd Bank."

14. *To raise moy on mortgage,* p. 209.

15. *To execute deeds, &c.,* p. 212.

16. To ACT generally in the conduct & managemt of the business affairs & ppty of the sd Bank in the sd colony [province] in such mner as the sd atty may in his discron think expedient & for the advantage of the sd Bank. Act generally.

17. FOR ANY of the pposes afsd to use the common seal provd to be used on behalf of the sd Bank in the sd colony [province]. Use seal.

18. *To appoint substitutes,* p. 213.

19. *To register power abroad,* p. 214.

AND the sd Bank hby nominates & appts B., of, &c., & C., of, &c., jointly, or in case of the death, absence, illness, or incapacity of either of them, then the other of them solely, to be attys & agents atty & agent of the sd Bank for & on behalf of the sd Bank to exercise & exte all & any of the powers & authorities hrinbfe conferred upon or vested in the sd A., in as full & effectual a mner to all intents & pposes as if the names of the sd B. & C. had been resply hrinbfe inserted in lieu of the name of the sd A., but nevertheless in the sevl events only & durg the periods hrinar mentd, that is to say, in case the sd A. shl die, or from any cause cease to be the colonial [provincial] manager of the sd Bank, then durg the period that shl elapse betn his death or ceasg to be such manager, & the arrival in Appointment of substitutes.

the sd colony [province] of his duly appted successor, or in case he shl at any time be absent from the sd colony [province], or shall be prevented by illness or other incapacity from actg, & shall not have appted a substitute or substitutes to act for him under the afsd power in that behalf, then durg the period of such absence, illness, or incapacity. *Ratification*, p. 223, *mutatis mutandis*. In witness, &c. (*a*).

XII.

POWER *of* Attorney *to manage* Property *or* Business *of a* Lunatic *situate out of this* Country.

KNOW ALL MEN that whas A., of ——, a pson of unsound mind so duly found by inquisition, *or* " not so found by inquisition," is entitled, &c., *continue recital of title to the este or business:* And whas by an order dated, &c., & made in the matter of the lunacy of the sd A. it was ordered that B. of ——, the duly appted committee of the este of the sd. A. *or* " the pson appnted to exercise the powers of a committee of the este of the sd A " shld be at liberty, &c., *continue recital of order in lunacy directg apptmt of atty and approval of master as at* p. 138, *mutatis mutandis*. NOW the sd A. actg by the sd B. as such committee *or* "as the pson appted," &c., as afsd with the approval afsd, hby appts, &c., p. 206 *et seq.* *See* pp. 222, *et seq.*, *and next Precedent.*

In witness, &c.

XIII.

POWER *of* Attorney *to manage* Merchants' Business *in a* Colony.

KNOW ALL MEN that we, A., of, &c., & B., of, &c., tradg in ptnp as —— at —— under the firm of A. B. & Co., havg appted C., of, &c., our colonial manager in the colony [province] of —— & being desirous of investg the sd C. with the powers

(*a*) As to the authentication of powers of attorney to be used in the Colonies, see *ante*, p. 216.

& authorities hrinar mentd Hereby appt, &c., *continue apptmt of C. as atty of firm*, p. 206, *f.* 3. To transact, manage, carry on, & do all & every business, matters & things requisite & necy, or in any mner connected with or havg reference to our sd business in —— afsd : And for such ppose to make & effect all such sales, pchases, dealgs, & transons as the sd atty may deem necy or expedient, of or in goods, wares, merchandise, cargoes, or other ppty whatsr : *to draw bills, &c.*, p. 212 : And also to conduct all correspondce of matters or business, by openg & answerg all letters addressed to our sd firm in —— afsd : And to supervise, direct, & manage all affairs & ppty in —— afsd belonging to us, or in wch we are or may become interested ; & to do & transact, or join with any other pson or psons in doing or transactg, all such acts & things as the sd atty shl deem expedient for the benefit or protection of the intts of our sd firm as fully & effectually as we could have done if psonally psnt : *powers to receive debts & personal este*, p 207 : *to settle accts, &c.*, p. 211 : *to accept composons, &c.*, p. 211 : *to take & defend pcdgs*, p. 210 : *to execute deeds, &c.*, p. 212, *to act generally*, p. 213, *to appoint substitutes*, p. 214 : *ratificon clause*, p. 213 : *substitution of anor atty*, p. 213 : *to register power abroad*, p. 214 : In witness, &c. (*b*).

To transact business.

To buy and sell.

To conduct correspondence.

To manage affairs generally.

XIV.

TO *accept* Composition *for* Debt *and receive* Dividends, *&c.*

KNOW ALL MEN, that I, A., carrying on the business of ——, at ——, under the firm name of A. B. & Co., do hby appt C., of, &c., my atty, in my firm name or orwise on my behalf, to accept, assent, or agree to, or enter into any composon, arrangemt, liquidon, or agrmt, wch has been or may be proposed, made, or entered into by Messrs. D. & Co., of, &c., or any ptner, in their sd firm, to, with, or for the benefit of their or his credors, in respt of a debt or sum of £——, wch is now due to me or my sd firm from the sd Messrs. D. & Co., on balce of acct for goods supplied, or any other debt or sum wch is now or may for the time being be so due, or any intt due or to accrue due upon the

Appointment of attorney.

To accept composition.

(*b*) As to the mode of execution, see *ante*, p. 215, note (*b*).

same or any pt throf, or any claim or demand wch I or my sd firm may have agst the sd Messrs. D. & Co., or any ptner in their sd firm: AND ALSO to attend psonally or orwise & vote at meetgs of the credors of the sd Messrs. D. & Co., or any ptner in such firm, & if need be to appt himself the sd, *atty*, or any substitute to be my proxy for that ppose, & to prove for, demand, receive, & recover all dividends, composons, & sums of moy whatsr wch are or may be or become due or payable to me or my firm under or in psuance of any such composon, arrangemt, liquidon, or agrmt as afsd, or under any bkptcy or orwise howsr, in respt of the sd debt or sum of £——, or any such other debt or sum, claim or demand as afsd, or in respt of any intt due or to accrue due upon the same, or any pt thof: AND to settle & adjust all accts & questions dependg or arisg betn me or my sd firm & the sd Messrs. D. & Co., or any ptner in their firm, or the trees or tree actg under any such composon, liquidon, or arrangemt as afsd, or in bkptcy or any other pson or psons in relation to the sd debt, or any of the matters afsd: AND UPON rect or recovery of any such dividends or moys as afsd, to sign & exte effectual rects, releases, or discharges for the same: AND ALSO, if it shd appear necy or expedient, *to take & defend legal proceedings*, p. 210: *to arrange & compromise*, p. 211: *to execute deeds, &c.*, p. 212: *to act generally*, p. 213: *to appt substitutes*, p. 213: *ratificon*, p. 214. [*Power to be irrevocable*, p. 214.] IN WITNESS, &c.

Vote at meetings.

Settle accounts.

Give receipts.

XV.

DEED *giving* FURTHER POWERS *to an* ATTORNEY.

KNOW ALL MEN, that whas I, A., of, ——, havg by deed poll or power of atty, dated, &c., under my hand & seal appted X., of, &c., & in the event of his death or the other events thrin mentd Y., of, &c., to be my atty with the powers thrin mentd: AND being desirous of givg to the sd X., & in the event afsd to the sd Y., the further or addonal powers & authorities hrinar contd: NOW I the sd A. hby give to & vest in the sd X., & in the event of his death or any of the other events mentd in the recited deed poll, the sd Y., the followg further or addonal

Recital.

Power of attorney.

Desire to extend powers.

Extension of powers.

powers & authorities, that is to say, in my name & on my behalf, *here insert the addonal powers; ratificon*, p. 214: PROVD ALWAYS that nothing hrin contd shl in anywise prejudice or affect the powers or authorities given or conferred by the recited deed poll, & this psnt power of atty shl take effect, & be in force concurrently with & solely by way of enlargemt & extension of the recited power of atty. [*Power to be irrevocable*, p. 214.] IN WITNESS, &c. Old powers preserved.

XVI.

DEED *revoking* POWER *of* ATTORNEY *and appointing* NEW ATTORNEY.

KNOW ALL MEN that whas, I, A., of, ——, havg by a deed poll or power of atty, dated, &c., under my hand & seal appted B., of, &c., to be my atty with the powers & authorities in the sd deed poll mentd: AND being desirous of revokg the powers given to the sd B. as afsd, & of apptg C., of, &c., to be my atty in place of the sd B.: NOW I the sd A. hby revoke & make void All & singr the powers & authorities by the recited deed poll given or conferred to or upon the sd B.: PROVD ALWAYS that the revocon hrinbfe contd shl not prejudice or affect anything lawfully done or caused to be done by the sd B., or any substitute or substitutes actg under him, in the exercise or intd exercise of any of such powers or authorities as afsd in the interval betn such revocon & the time of the same becomg known to him or to his substitute or substitutes: AND I THE sd A. hby ratify & confirm everything lawfully done or caused to be done by the sd B. or any substitute or substitutes actg under him in the exercise or intd exercise of any of such powers or authorities, includg anything so done or caused to be done in such interval as afsd: AND FURTHER that I the sd A. hby *continue apptmt of C. as atty*, p. 206, to exercise & exte all or any of the powers & authorities by the sd deed poll given or conferred by me to or upon the sd B. in as full & ample a mner to all intents & pposes as if the name of the sd C. had been inserted in the sd deed poll in the place of the sd B. *Ratificon*, p. 214. [*Power to be irrevocable*, p. 214.] IN WITNESS, &c.

Recitals. Power of attorney. Desire. Revocation. Not to affect acts previous to revocation becoming known. Ratification. Appointment of new attorney.

CONDITIONS OF SALE.

PRELIMINARY NOTE.

Function of particulars and conditions.

THE function of conditions of sale is to state the terms on which the property as described in the particulars is sold: *Torrance* v. *Bolton*, L. R. 14 Eq. 124; 8 Ch. 118; *Blaiberg* v. *Keeves*, [1906] 2 Ch. at p. 184; and, of the particulars, to describe the property (*i.e.* the land or thing and the estate or interest in it) which is to be sold. See *Re Lyne-Stephens & Scott-Miller's Contract*, [1920] 1 Ch. 472. The conditions unless annexed to or in the possession of the person who is attracted by the particulars cannot be relied on to correct material statements of fact contained in the particulars: *Torrance* v. *Bolton*, *sup.*

General conditions.

Matters relating to the conduct of the sale down to the time of completion are dealt with by general conditions. Provision is also made by general condition (see form, *post*, p. 259) protecting the vendor from liability in case of discovery after the sale of innocent errors of description in the particulars of the property sold: *Russell* v. *Harford*, L. R. 2 Eq. 507, discussed 54 Sol. J. 265; and stipulating for the carrying out of the contract in that event with or without compensation as may be desired. It has been usual also to reserve to the vendor by general condition a comprehensive power to rescind the contract in case he should be unable or unwilling to comply with any requisition as to title or conveyance insisted upon by the purchaser, subject in that event to the return of the deposit. A similar but less comprehensive power framed so as not to conflict with the statutory obligations of the vendor in relation to the showing and making of title will still be found necessary or desirable in the interests of the vendor in a variety of circumstances and should be reserved by general condition accordingly in substitution for the wider power of the same kind formerly reserved. It has also been and will still be usual to provide by general condition for forfeiture of the deposit and resale in case the purchaser fails to carry out his contract, but this, again, is a condition which must be framed and have effect subject to the statutory obligations of the vendor and to the power of the court to order a return of the deposit under L. P. Act, 1925, s. 49 (2).

The principles or rules by which, apart from the recent statutory provisions, contracts for the sale of land are to be interpreted—which are the same both in law and in equity—are explained in *Re Terry & White*, 32 Ch. D. 14, where Lindley, L.J. (at p. 27), emphasises the necessity of distinguishing these rules from those which guide the Court in enforcing or declining to enforce specific performance: see also *Re Banister*, 12 Ch. D. at p. 142, and for a summary of the remedies of the parties to a contract for the sale of land see Williams, V. & P., 3rd ed. pp. 35 *et seq.*

Special conditions.

In conditions of sale in addition to general conditions, special conditions as to the length of title to be shown, and the evidence of title to be furnished, will be inserted in appropriate cases.

It is an implied condition of an open contract that the vendor shall make a good title to the property, but the legal implication may be rebutted by proof that the purchaser entered into the contract with knowledge of certain defects in the title. Where, however, there is an express contract to make a good title, it is not open to the vendor to prove that at the time of the contract the purchaser knew of a defect in the title for the purpose of leading to the inference that a good title was not to be shown in that particular: *McGrory* v. *Alderdale Estate Company*, [1918] A. C. 503.

"Showing" and "making" title.

The distinction between "showing" and "making" a good title is this—a good title is shown when all the matters which, if proved, would make the title good are shown on the abstract; a good title is made when those matters are proved: *Parr* v. *Lovegrove*, 4 Drew. 170. Formerly an abstract was said to be perfect, in the sense of showing a good title, when it showed a good equitable title with power to get in the legal estate: *Camberwell, &c., Socy.* v. *Holloway*, 13 Ch. D. at p. 763, and see *Re Hucklesby & Atkinson*, 102 L. T. 214, 217, and Williams, V. & P., 3rd ed. 150, 151; but no abstract of title to land can now be considered perfect in this sense which does not, with the aid of such of the statutory transitional provisions (for this purpose treated as supplemental to the documentary title: see *post*, p. 435) as may be applicable, trace the legal estate to the vendor as estate owner free from any equity which would be capable of being overreached by means of a disposition in trust for sale made pursuant to the L. P. Act, 1925, s. 2 (2), or to some other person as estate owner from whom the vendor is entitled to require a conveyance, either to himself or to the purchaser, or in whose name and on whose behalf the vendor is entitled to convey the legal estate: L. P. Act, 1925, s. 42. On the other hand, it is not necessary to include in the abstract any instrument relating only to interests or powers which will be overreached on conveyance to the purchaser: L. P. Act, 1925, s. 10. As to the title to be shown on the sale of settled land, see *post*.

The statutory provisions relating to the title to be shown and made on the sale of land are for the most part to be found in sections 10, 42–45, and 125 of the L. P. Act, 1925, to which reference is made below wherever appropriate. S. 42, in particular, should be carefully studied. As pointed out, *post*, p. 431, estate ownership, *i.e.* the ownership of the legal estate in fee simple or for a term of years absolute is made the basis of the new system of conveyancing which, in course of time as the defects in title due to the old system have disappeared, will make it possible to vest by conveyance of the legal estate alone an indefeasible title to the land conveyed, subject only to such equities as a purchaser may ascertain for himself by inspection of the Register of Land Charges. The transitional provisions of the L. P. Act, 1925, by means of which the legal estate will have become vested at the commencement of the Act in the true owner or in some person or persons on behalf of the true owner or owners, constitute the first step towards the introduction of the new system. S. 42 is designed to maintain the simplicity of title necessary to the success of the system. Under that section a vendor who, by resort to s. 2, sub-s. 2, of the Act or otherwise, has it in his power to make or compel a transfer of the legal estate free from equities must do so, even though the contract is confined in terms to the

sale of the corresponding equitable interest, or expressly provides that no objection shall be taken on account of any outstanding legal estate.

Misleading conditions.

In drafting special conditions it must be remembered that as the object of a special condition is to limit some right which the purchaser would have under an open contract, it must be framed so as not to be misleading, but fairly and clearly to state the fact to be assumed or the defect provided against. A special condition may be so misleading or unfair as to disentitle the vendor from enforcing specific performance : see *Re Banister*, 12 Ch. D. 131 ; *Re Marsh & Earl Granville*, 24 Ch. D. 11 ; *Nottingham, &c., Co.* v. *Butler*, 16 Q. B. D. 778. In any such case although formerly, in the absence of *mala fides* (*Re Banister, sup.*), or conduct tainting the contract with misrepresentation (*Nottingham, &c., Co.* v. *Butler, sup.* at p. 790), the parties would have been left to their remedies at law : *Re Scott & Alvarez*, [1895] 2 Ch. 603, the court has now power to make an order for the return of the deposit : L. P. Act, 1925, s. 49 (2).

A condition requiring the purchaser to assume facts which the vendor believes to be true, although entirely unsupported by evidence, is not misleading, and it is unnecessary, though it can seldom be undesirable, as formerly was sometimes the case, to state the specific defect which the condition is intended to cover : *Re Sandbach*, [1891] 1 Ch. 99 ; see also *Re Scott & Alvarez*, [1895] 2 Ch. 603 ; *Blaiberg* v. *Keeves*, [1906] 2 Ch. 175 ; but a condition is misleading if it requires the purchaser to assume that which the vendor knows or from the state of his title ought to know to be false : *Re Banister*, 12 Ch. D. 131.

Apart from contract, the Court will not compel a vendor to give nor a purchaser to accept an indemnity : *Balmanno* v. *Lumley*, 1 Ves. & B. 224 ; *Aylett* v. *Ashton*, 1 Myl. & Cr. 105 ; *Bainbridge* v. *Kinnaird*, 32 Beav. 346 ; *Re Weston & Thomas*, [1907] 1 Ch. 244, and see *Blake* v. *Phinn*, 3 C. B. 976.

Statutory provisions.

By s. 46 of the L. P. Act, 1925, the Lord Chancellor was empowered to prescribe forms of conditions which should apply to contracts by correspondence. He has prescribed such a form and it is printed, *infra*, p. 292. The section also appears to have contemplated general statutory conditions applicable to cases other than contracts by correspondence. Unfortunately the section was so worded as to make all the prescribed forms apply to contracts by correspondence. Accordingly no forms have been prescribed to meet other cases.

The following is a summary of the statutory provisions (which will apply unless excluded by the terms of the contract), and of some of the principal points bearing on conditions and contracts of sale.

1. Abstract of title.

1. As to abstract of title. By the L. P. Act, 1925, s. 44 (1), 30 was substituted for 40 years as the commencement of title under a contract for the sale of land (which term includes an incorporeal hereditament but not an undivided share of land : see s. 205 (1) (ix), except in those cases in which an earlier title than 40 years might have been required under the previous law. Where the deed with which the title is to commence, though 30 years old, is exceptional in its nature, or might be objected to as unsuitable (*e.g.*, a voluntary deed of gift : see *Re Marsh & Earl Granville*, 24 Ch. D. 11), an express stipulation stating its nature should be inserted.

By the L. P. Act, 1925, s. 45 (1), on a sale of any property (which term includes any thing in action and any interest in real or personal property : see s. 205), the purchaser is precluded from going into the title prior to the time stipulated or prescribed by law for the commencement, even though a power exercised by an abstracted instrument was created previous to such

commencement. But this sub-section does not preclude the parties from requiring the production or an abstract or copy of (i) certain powers of attorney, (ii) documents creating interests not shown to be disposed of, and (iii) documents creating limitations or trusts referred to in an abstracted document, thus overriding *Re Arran & Knowlesden*, [1912] 2 Ch. 141. S. 45 (1), though sufficient for ordinary cases, falls short of the usual express condition in the case of a title commencing with a general devise in a will in not providing that the ownership of the testator shall be assumed (as to which see Dart, 7th ed. 332) ; and it does not bar an objection to the earlier title which the purchaser may discover from collateral sources : see *Nottingham, &c., Co.* v. *Butler*, 16 Q. B. D. 778 ; also *Waddell* v. *Wolfe*, L. R. 9 Q. B. 515 ; *Re Cox & Neve*, [1891] 2 Ch. 109 ; *Re Nisbet & Potts*, [1906] 1 Ch. 386 ; Dart, 7th ed. 164 ; Williams, V. & P., 3rd ed. 186. In practice, an express provision barring objections in respect of the anterior title is still often inserted, and is desirable except in simple cases. If there is such a condition, and the purchaser discovers before completion, that a good holding title cannot be acquired, specific performance will be refused, and the Court may order a return of the deposit (L. P. Act. 1925, s. 49 (2)), overruling on this point *Re Scott & Alvarez*, [1895] 2 Ch. 603. It is to be borne in mind, moreover, that the statutory provision does not apply where the deed forming the root of title is itself defective on its face for want of parties or of due execution or otherwise ; and where a conveyance subject to a mortgage then existing and subsequently paid off is made the root of title, the purchaser would have the right, unless specially barred or qualified, to have the previous title to the mortgage deduced : see s. 45 (1) (ii). See forms as to commencement of title, *post*, p. 299.

Express condition as to commencement.

By the L. P. Act, 1925, s. 44 (6), on a sale of enfranchised copyhold or customary land, the lord's title cannot be called for.

Enfranchised land.

By the same Act, s. 45 (5), on a sale in lots a purchaser of two or more lots held wholly or partly under the same title cannot require more than one abstract of such title, except at his own expense ; so that a condition on that point is unnecessary.

Abstract of title common to several lots.

2. As to leaseholds. By the L. P. Act, 1925, s. 44 (2), a purchaser of leaseholds, whether held by lease or underlease, cannot call for the title to the freehold. By the same Act, s. 44 (3), the purchaser of an underlease cannot call for the title to the leasehold reversion (but he can of course call for an abstract of the underlease itself and the dealings therewith : *Gosling* v. *Woolf*, [1893] 1 Q. B. 39) ; and by s. 45 (2, 3), a purchaser of leaseholds is to assume, unless the contrary appears, that the lease, and (in the case of an underlease) that every superior lease was duly granted. These enactments would not bar an objection on account of any defect in the lessor's title which may be patent, or may be discovered *aliunde*.

2. Leaseholds.

Title to reversion.

Leases for lives now take effect as leases for a term of 90 years determinable after the death of the original lessee or the survivor of the original lessees in manner declared in s. 149 (6) of the L. P. Act, 1925. Accordingly the above provisions are applicable to such leases as if they had been originally terms of years.

Leases for lives.

S. 44 of the L. P. Act, 1925, limiting the length of title to 30 years applies to long leaseholds ; but the creation of the term must be shown : *Frend* v. *Buckley*, L. R. 5 Q. B. 213 ; Dart, 7th ed. 330.

Long leaseholds.

By the L. P. Act, 1925, s. 44 (9), on the sale of a lease granted under a power, a preliminary contract for or relating to the lease is not to form part of the title. In the case of a building lease granted under the power in the

Contract for lease.

S. L. Act, 1882, the preliminary contract might be very material to the title: see *Re Chawner's S.E.*, [1892] 2 Ch. 192.

3. Recitals made evidence.

3. As to recitals being evidence. By the L. P. Act, 1925, s. 45 (6), recitals, statements, and descriptions of facts, matters, and parties in instruments 20 years old are, unless proved to be inaccurate, to be taken as sufficient evidence. It is perhaps necessary to point out that this provision does not make a sub-recital evidence. In *Bolton* v. *London School Board*, 7 Ch. D. 766, the corresponding section of the V. & P. Act, 1874, was held to apply to a recital of the vendor's seisin, so as to deprive the purchaser of the right, which he would otherwise have had, to have a 40 years' title deduced; but that decision was not followed, *Re Wallis & Grout*, [1906] 2 Ch. 206. The statutory clause is less full than the usual express condition, which extends to matters assumed or implied as well as to actual statements (but see *Re Marsh & Earl Granville*, 24 Ch. D. 11, where the Act was held to apply although there was merely an implication); and also (when necessary) makes recitals of documents evidence of their contents and due execution, &c. An express condition should be inserted when it is desired to extend it to recitals in deeds less than 20 years old (as often happens); or to making recitals evidence of the contents, &c., of deeds.

4. Want of covenant for production.

4. As to muniments not in the vendor's possession. The L. P. Act, 1925, s. 45 (7), debars the purchaser from objecting to the title on account of the inability of the vendor to furnish him with a legal covenant for production of documents of title, where on completion of the contract he would have an equitable right to their production. For a case in which it was held that the equitable right to production was adequate under the circumstances, see *Re Jenkins & Commercial Electric Theatre Co.*, 61 Sol. J. 283; and see the cases as to the possession and production of muniments, Elph. Introd., 7th ed., 141 *et seq*, and *post*, p. 511.

5. Receipt for rent evidence of performance of covenants.

5. By the L. P. Act, 1925, s. 45 (2, 3), on a sale of leaseholds, the receipt for the last rent due under the lease prior to completion is made *primâ facie* evidence of the performance of the covenants in the lease, and any superior lease, up to completion, and of the payment of the rent under any superior lease, unless the contrary appears. The statutory provision has no application where a breach has been committed: *Re Taunton, &c., Socy. & Roberts*, [1912] 2 Ch. 381, and will not therefore bind the purchaser to assume that it has been waived: *Re Highett & Bird*, [1903] 1 Ch. 287, explained in *Re Allen & Driscoll's Contract*, [1904] 2 Ch. at p. 231. A condition making the receipt *conclusive* evidence of performance or waiver should therefore generally be employed (see General Conditions, p. 266). Nor does the statutory provision apply to a peppercorn or other nominal rent, so as to make a receipt for such a rent evidence of the performance of covenants: *Re Moody & Yates*, 30 Ch. D. 344. And where on a severance the rent has been apportioned or exclusively charged on other property comprised in the lease, the purchaser should be specially barred from requiring proof of the payment of the rent charged on such other property.

6. Expenses.

6. As to expenses. By the L. P. Act, 1925, s. 45 (4), on a sale of any property (which includes any thing in action and any interest in real or personal property) the purchaser is to bear the expense of any of the following matters which he may require: (a) the production and inspection of all documents not in the possession of the vendor or his mortgagee or trustee, and incidental journeys (for the old rule, see *Hughes* v. *Wynne*, 1 Jur. 720: Williams, V. & P., 3rd ed. 113); (b) searching for, procuring, and

verifying all evidences, &c., not in the vendor's possession; (c) all copies or abstracts of or extracts from documents not in the possession of the vendor or his mortgagee or trustee; (d) copies of documents of which possession is retained by the vendor or his mortgagee or trustee. This provision, so far as it goes, is tantamount to and in no respect more stringent than the condition which was previously usual: see the form 1 K. & E., 6th ed., p. 243, 9 (A).

On sub-division (a) it has been decided, that it throws on the purchaser the expense of the production of every deed not in the vendor's possession, even if it be the root of title: *Re Stuart & Olivant*, [1896] 2 Ch. 328.

On sub-division (b) it appears necessary to distinguish between documents which are merely evidence of pre-existing facts (*Re Wright & Thompson*, [1920] 1 Ch. 191), and documents which are themselves material to the title to be shown, *e.g.*, an architect's certificate: *Re Moody & Yates*, 30 Ch. D. 344.

On sub-division (c) it has been decided (*Re Johnson & Tustin*, 30 Ch. D. 42; *Re Stamford, &c. Banking Co. & Knight*, [1900] 1 Ch. 287), that the clause assumes that a proper abstract deducing the title from the commencement has been already delivered, and does not exonerate the vendor from furnishing such abstract at his own expense, although the deeds may be out of his possession. If the vendor desires to protect himself in this respect he must do so by an express condition.

Documents delivered to purchaser of another lot.

Sub-division (d) of course applies to documents delivered to the purchaser of another lot. It does not (as the old common form of condition did) throw on the purchaser the expense of furnishing him, during the investigation of the title, with copies of documents which are to be handed over to him on completion; but this does not appear very material, and it is not usual to extend the condition in this respect.

It should be observed that the sub-section only applies to the expenses of production and inspection, so that unless a special condition to the contrary is inserted, the vendor must still bear the expense of obtaining title deeds required to be handed over on completion: *Re Duthy & Jesson*, [1898] 1 Ch. 419.

Stamping.

In addition to the expenses provided for by s. 45 (4), the old form of condition usually threw on the purchaser the expense of stamping unstamped and insufficiently stamped documents, and of registering unregistered documents. By the Stamp Act, 1891, s. 117, such a condition as to stamping is expressly invalidated as to documents executed after the 16th May, 1888. In future, therefore, it can only have a limited operation. The Commissioners of Inland Revenue do not allow a contract containing this condition to be stamped after execution without payment of the penalty.

In the case of a power of attorney created after 1925 and not handed over to the purchaser, the vendor is bound to give the purchaser an office copy free of expense: L. P. Act, 1925, s. 125 (2).

By s. 43 of the L. P. Act, 1925, when a purchaser is entitled to a conveyance of the legal estate free from registered land charges, he may, notwithstanding any stipulation to the contrary, require at the vendor's expense cancellation of the registration of the land charge (or concurrence of the owner thereof in the conveyance), unless the conveyance itself "overreaches" the land charge.

7. Covenants for title, &c.

7. As to the implication of covenants for title or against incumbrances by the use of the statutory language, see L. P. Act, 1925, ss. 76, and *post*,

pp. 507, *et seq.* As to the implication of covenants for payment and indemnity and of powers of distress and entry on the sale of land affected by a rentcharge, see L. P. Act, 1925, ss. 77 and 190, and *post*, pp. 379, 380, and on the sale of leasholds, see the same sections, and *post*, pp. 439, 440; and as to the implication of covenants on the transfer of registered leaseholds, see L. Reg. Act, 1925, s. 24, and Rule 115.

8. Muniments to be retained by vendor.

8. As to the muniments to be retained by the vendor. By the L. P. Act, 1925, s. 45 (9) (a), where the vendor retains any part of the land (including leaseholds, but not other personalty (*Re Williams and Newcastle*, [1897] 2 Ch. 144 : *Re Fuller & Leathley*, 76 L. T. 646) to which any documents of title relate, or where muniments showing the title to and the extinguishment of an easement formerly appurtenant to the land sold, over a servient tenement retained by the vendor, relate to the servient tenement : *Re Lehmann & Walker*, [1906] 2 Ch. 640, he is entitled to retain them. And by s. 45 (9) (b) he is entitled to retain an instrument creating a trust which is still subsisting or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.

Expense of covenants for production.

By the same Act, s. 45 (8), the expense of covenants for production required by the purchaser (other than of perusal on behalf of and execution by the vendor or covenantor) is to be borne by the purchaser.

In practice the statutory form of acknowledgment of the right to production and undertaking for safe custody (L. P. Act, 1925, s. 64, re-enacting the C. Act, 1881, s. 9), is now adopted in lieu of a covenant : see *post*, p. 515.

General effect of statutory provisions.

The above-mentioned statutory provisions are principally of value for the protection of vendors selling under open contracts, but they may be and are in practice to a great extent relied on in ordinary conditions and contracts for sale of land.

Contract to grant an easement.

Easements are " hereditaments " : *Jones* v. *Watts*, 43 Ch. D. 574 (a case on the V. & P. Act, 1874, s. 2). Under the L. P. Act, 1925, a contract to grant an easement is a contract to grant " land " : s. 205 (1) (ix).

Sales by tenants for life.

The case of a tenant for life selling under the powers of the S. L. Act, 1925, is similar to that of trustees selling under a trust for sale. The tenant for life or the trustees for sale should be expressed to be selling as such ; and the purchaser should be precluded from requiring any further covenant for title than the usual statutory covenant against incumbrances.

Sales by trustees.

Trustees for sale (Trustee Act, 1925, s. 12), including personal representatives (*ib.*, s. 69), can sell property of any nature by auction or private contract, subject to any conditions of sale, &c. S. 8 of the Adm. of Este. Act, 1925, enables proving executors to sell not only in the case mentioned in C. Act, 1911, s. 12, of power being reserved to the other executors but in all cases and whether the testator died before or after the commencement of the 1925 Act. As to the power of the personal representatives of a sole or last surviving or continuing trustee, see *ante*, p. 122.

Depreciatory conditions.

It has been held that the employment of unnecessarily depreciatory conditions on a sale by trustees is a breach of trust which vitiates the contract, and entitles the purchaser to repudiate it : *Dance* v. *Goldingham*, L. R. 8 Ch. 902 ; *Dunn* v. *Flood*, 28 Ch. D. 586 ; but this doctrine (which was productive of great inconvenience in practice, without any compensating advantage to the beneficiaries) is modified in a very beneficial manner by the T. Act, 1925, s. 13, enacting that a sale under such circumstances by trustees (which includes executors and administrators, and extends to constructive and implied trusts : see T. Act, 1925, s. 69) shall not be

impeachable by any *cestui que trust* unless it appears that the consideration was thereby rendered inadequate ; and shall not be impeached after the conveyance against the purchaser, except in case of collusion ; and that a purchaser shall not be at liberty to object to the title on this ground. This puts the law on a satisfactory footing, but the reckless insertion of needlessly stringent conditions should be avoided.

Trustees selling with co owners.

As to the power of trustees to join with co-owners or owners of other property in selling, see *Re Cooper & Allen*, 4 Ch. D. 802, and the cases there cited, and the T. Act, 1925, s. 12. It is doubtful, in the absence of judicial decision, whether the T. Act, 1925 s. 13, permits trustees to concur in selling with owners of adjacent property which is subject to depreciatory conditions. Probably it would be held that the *onus* lies on the trustees of showing that a higher price has been obtained by the joint sale.

Married women trustees.

A married woman trustee, or personal representative can now enter into a valid contract for sale of any interest in any real or personal estate, s. 170 of Law of Property Act, 1925, re-enacting M. W. P. Act, 1907, s. 1.

See further as to the law and practice on the subject of conditions and contracts of sale, Dart, 7th ed. 118 ; Williams, V. & P., 3rd ed. 31.

In some places it is the very objectionable practice not to print the conditions of sale for circulation, but merely to read them out in the auction room. For instances of the mischief arising from this, see *Torrance* v. *Bolton*, L. R. 8 Ch. 118 ; *Dougherty* v. *Oates*, 45 Sol. J. 119.

Registered land.

On a sale of registered land the Land Registry Act, 1925, s. 110, provides that :

Authority to inspect register.

" (1) The vendor shall, notwithstanding any stipulation to the contrary, at his own expense furnish the purchaser with an authority to inspect the register, and, if required, with a copy of the subsisting entries in the register and of any filed plans and copies or abstracts of any documents or any part thereof noted on the register so far as they respectively affect the land to be dealt with (except charges or incumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion) : Provided that (a) unless the purchase money exceeds one thousand pounds the costs of the copies and abstracts of the said entries, plans, and documents shall, in the absence of any stipulation to the contrary, be borne by the purchaser requiring the same ; (b) nothing in this section shall give a purchaser a right to a copy or abstract of a settlement filed at the registry :

Subsisting rights.

" (2) The vendor shall, subject to any stipulation to the contrary, at his own expense furnish the purchaser with such copies, abstracts and evidence (if any) in respect of any subsisting rights and interests appurtenant to the registered land as to which the register is not conclusive, and of any matters excepted from the effect of registration as the purchaser would have been entitled to if the land had not been registered :

Abstract.

" (3) Except as aforesaid, and notwithstanding any stipulation to the contrary, it shall not be necessary for the vendor to furnish the purchaser with any abstract or other written evidence of title, or any copy or abstract of the land certificate, or of any charge certificate :

Filed abstract conclusive.

" (4) Where the register refers to a filed abstract or copy of or extract from a deed or other document such abstract or extract shall as between vendor and purchaser be assumed to be correct, and to contain all material portions of the original, and no person dealing with any registered land or charge shall have a right to require production of the original, or be affected in any way by any provisions of the said document other than those

appearing in such abstract, copy or extract, and any person suffering loss by reason of any error or omission in such abstract, copy or extract shall be entitled to be indemnified under this Act :

Vendor not registered.

"(5) Where the vendor is not himself registered as proprietor of the land or the charge giving a power of sale over the land, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of the charge, as the case may be, or procure a disposition from the proprietor to the purchaser." (This sub-section re-enacts s. 16 (2) of the L. T. Act 1897; see as to the application of that sub-section to the case of a sale by a mortgagee under a mortgage executed before registration of mortgagor with possessory title in a compulsory area *Re Voss and Saunders*, (1911) 1 Ch. 42.)

Land certificate.

"(6) Unless the certificate is deposited at the registry the vendor shall deliver the land certificate or the charge certificate, as the case may be, to the purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate is dealt with, or only a derivative estate is created, he shall, at his own expense, produce, or procure the production of, the certificate in accordance with this Act for the completion of the purchaser's registration. Where the certificate has been lost or destroyed the vendor shall, notwithstanding any stipulation to the contrary, pay the costs of the proceedings required to enable the registrar to proceed without it."

Possessory title.

In the case of a possessory title, a supplementary abstract must be furnished, consisting of an ordinary abstract of title to the land of the usual length down to and including the entry of the first registered proprietor on the register, and continuing beyond that point as regards any estate right or interest adverse to or in derogation of the title to such proprietor which may be disclosed by the earlier title : see *post*, p. 317, f. 3.

Legal estates to be registered.

Estates capable of subsisting as legal estates are the only interests in land in respect of which a proprietor can now be registered, L. R. Act, 1925, s. 2 (1). The legal estate in registered land cannot be dealt with off the register: L. R. Act, 1925, s. 69 (4), overriding *Capital & Counties Bank*, v. *Rhodes*, [1903] 1 Ch. 631; but by virtue of ss. 18 and 21 of the Act certain legal estates and interests (*e.g.* mines, rentcharges, easements) may be granted or reserved out of the registered estate in the prescribed manner; see Rule 113. All such legal estates or interests must, with certain exceptions (s. 19 (2) and 22 (2)), and subject to the provisions relating to mortgages, be completed by registration in the same manner and with the same effect as provided with respect to transfers of registered estates, and notice thereof must be entered on the register. The exceptions referred to are that, as regards registration, neither a lease granted for a term of 21 years or less, nor a mortgage term, where there is a subsisting right of redemption, is to be registered, and that no easement need be registered except as appurtenant to registered land; and as regards notice, that neither notice of a term of 21 years or less granted at a rent without taking a fine nor of an easement (except against the registered title of the servient land) need be entered on the register.

Reservation of legal estates and interests out of registered estate.

Nature of registered estate.

The registered estate (s. 69 (1)) is deemed to be the fee simple in the case of freeholds, and the legal term in the case of leaseholds. This disposes of the question sometimes raised before the Act whether the estate of the registered proprietor was sufficient to support the grant of an easement.

Minor interests.

Interests not capable of subsisting as legal estates, and which cannot therefore be registered, may be created by the appropriate assurances off the register in all respects as if the land were not registered. Elaborate provisions relating to the creation and protection by means of notices, cautions, inhibitions or restrictions of such interests which in the Act are referred to as "minor interests," are contained in ss. 101—105 and s. 109. Any interest not so protected will be overridden by the transfer to the purchaser when registered: L. R. Act, 1925 ss. 20—23, unless it is one of the liabilities, rights, or interests, mentioned in the following paragraph.

Liabilities which are not incumbrances.

Registered land is, unless the contrary is expressed on the register, subject to such of the liabilities, rights, and interests mentioned in the L. R. Act, 1925, s. 70, as are for the time being subsisting in reference thereto. Under the L. T. Act, 1897 s. 16 (1) (ii), the only evidence that a purchaser could require as to the existence or non-existence of these liabilities, &c., was a statutory declaration. S. 16 (1) of the L. T. Act, 1987 was repealed by the Law of Property Act, 1925, and it would appear that s. 110 (2) of the L. R. Act, 1925, is designed to take its place: see this section set out *ante*, p. 241. The liabilities in question may be divided into two classes: *First*, those, such as land tax, which are not, and *secondly*, those which are, incumbrances as between vendor and purchaser in the case of unregistered land. We shall confine our remarks to incumbrances of the latter class.

If notice of the existence of any such incumbrance has been entered on the register under Rule 197, the vendor will have to prove that they do not exist, and have the entry on the register removed. Where the land is registered with absolute title the purchaser will not be entitled to any abstract of the title prior to first registration, and in this case it would appear from s. 110 (2) that unless notice of the incumbrance has been entered the purchaser must assume the non-existence.

Easements over registered land.

The L. R. Act, 1925, s. 70 (2), directs the Registrar to enter a note of an easement, &c., existing at the time of first registration if it is created by an instrument and appears on the title. S. 70 (3) authorises him on proof of the land being subject to an easement, &c., to enter on the register a notice thereof. S. 52 states the effect of notices.

Easements appurtenant to registered land.

Easements which are appurtenant to registered land may be noted on the register (Rule 254); but whether noted or not, will pass with the land under a registered transfer thereof (L. R. Act, 1925, s. 20 (1)), and easements appurtenant to land before registration with absolute or good leasehold title will on registration of the land become appurtenant thereto (*ib.* s. 72).

Restrictive covenants.

Where registered land is subject to restrictive conditions, the fact of their existence may be entered on the register and subsequent transferees will be deemed to be affected with notice of the fact: see L. R. Act, 1925, s. 50. The effect of notice is stated in s. 52. Registered land may be made subject to restrictive covenants: *ib.* s. 40, and see Rule 212.

Manorial incidents.

A note may be entered of the fact that land is affected by manorial incidents: L. R. Act, 1925, s. 51.

Production of certificate.

No registered disposition can be made by the registered proprietor of the land or charge without producing the Land Certificate or Certificate of Charge, as the case may be, to the Registrar: L. R. Act, 1925, s. 64.

Sale under power.

A transfer of land made by the registered proprietor of a charge in exercise of the power of sale conferred by the charge may be made without production of the former Land Certificate, but the Certificate of Charge (if any) must be produced or accounted for: L. R. Act, 1925, s. 64 (9).

Caution by purchaser.

Where the purchase-money is payable by instalments and the transfer is not to be executed until the last instalment is paid, the purchaser should put a caution on the register.

Completion.

On completion the purchaser must have the Land Certificate handed over to him, or if part only of the land is sold the Land Certificate must be left at the Registry, and a new certificate will be issued to him; L. R. Act, 1925, s. 64 (3). If any caution exists the vendor should, if possible, obtain its withdrawal and hand it over to the purchaser with the transfer on completion. If the transfer is left for registration without the withdrawal, notice will be served on the cautioner by the Registrar: L. R. Act, 1925, s. 55, Rule 218. Upon registration of the transfer with the consent of the cautioner, the caution is not cancelled as it would be if withdrawn. If a restriction exists requiring the consent of any person to the transfer the vendor must obtain his consent or such restriction must be withdrawn: L. R. Act, 1925, s. 58. If an inhibition exists against a transfer being made the vendor must, before completion, obtain an order from the Registrar authorising the transfer to be registered. Similar remarks apply to registered charges which are to be paid off out of the purchase-money.

Registered charges.

Searching in the register.

The purchaser's solicitor must search the register immediately before completion, and if he finds any caution, restriction, or inhibition which will remain in force after completion, and which may prevent the purchaser from obtaining the title he has bargained for, he must decline to complete until it has been removed.

Provisional registration or priority notice.

The safest method of completion, though but rarely adopted, is by provisional registration or by priority notice, see *post*, p. 320.

Searches in the register may be made (except in special cases) only by the authority of the registered proprietor, or with his consent in writing: Rules 287 to 297; an official search may be made: Rule 292; and the registered proprietor may apply by telegraph or telephone to the Registrar to search whether any caution, restriction, inhibition, or notice has been entered up after a named date: Rules 293, 294.

Forms.

Transfers have to be made in the form given in the First Schedule to the Land Registration Rules, see Rules 74, 98, 115. Where no such form is applicable the transfer is to be in such form as the Registrar shall direct: Rule 75. Printed forms may be obtained from the office gratis: Rule 318.

Deeds, production.

Under the L. R. Act, 1925, s. 15, the Registrar has power where an application has been made for the registration of any land, to require any person, within a time limited, to show cause why such person should not produce any deeds, instruments, or evidence of title in his possession and affecting such land, and to the production of which the applicant for registration or any trustee for him is entitled.

Deeds, marking of.

Under s. 16 of the same Act, the Registrar is required to mark such documents of title of a person desiring to be registered as proprietor as shall bring the fact of registration to the notice of any person dealing with the registered land. In the case pf registration with a possessory title the Registrar has power under special circumstances to dispense with the production of documents, *ib.*

Stamps

When an instrument of transfer or charge is executed for the sole purpose of carrying out on the register a transaction already effected by an unregistered instrument, the latter instrument is to be stamped, and the registered instrument is not to be stamped, and the former instrument is to be

produced at the office to show that the duty has been paid : see L. R. Act, 1925, s. 14 (3).

A registered purchaser is protected against liability for the payment of succession or estate duty, even although the liability to such duty is noted on the register : L. R. Act, s. 73. "Purchaser" means purchaser in good faith for valuable consideration (s. 3). And the registration of a charge for death duties as a land charge (s. 10 (1), Class D. of the L. C. Act, 1925) has no effect in the case of registered land (*ib.* s. 23). Death duties.

For the fees payable at the Registry, see the L. R. Fee Order. Fees.

I.

GENERAL CONDITIONS *on* SALE *by* AUCTION *of* FREEHOLDS. VARIATIONS *for a* SALE *in* LOTS, *and adapted to different circumstances, and for* UNREGISTERED LAND *in a* COMPULSORY DISTRICT (*a*).

1. THE highest bidder [for each lot] shl be the pchaser & if any dispute arises as to any biddg the ppty [lot] shl be put up again at the last undisputed biddg. There will be a reserve price [for each lot] & the vendors or their agent shl be at liberty to bid. The amt of the advance of each biddg shl be regulated by the auctioneer & no biddg shl be retracted. Biddings (*b*).

(*a*) Copyholds will automatically become freeholds immediately before Jan. 1, 1926 : see L. P. Act, 1922, s. 128, and L. P. Act, 1925, s. 202. For special conditions relating to such enfranchised copyholds, see p. 314, *post*. For conditions of sale for various circumstances, see 12 Encycl. Prec., 275 *et seq.* ; and on sale by the Court, *post*, p. 287.

(*b*) As to the necessity for stating whether the sale is subject to a reserve price, see the Sale of Land by Auction Act, 1867, Williams, V. & P., 2nd ed. 23, 56, 70; *Rainbow* v. *Howkins*, [1904] 2 K. B. 322; Dart, 7th ed. 121, 137, 210; and as to reserving liberty to bid up to that price, see *Gilliat* v. *Gilliat*, L. R. 9 Eq. 60. The words "up to the reserve" are usually omitted, and there seems no reason for inserting them. The auctioneer cannot effectively accept a bid below the reserve : *McManus* v. *Fortescue*, [1907] 2 K. B. 1. The following is another form of part of this condition : As to reserve price, division of lots, &c.

"The vendors reserve the right—*a*. To bid by themselves or their agent, & to refuse any bid ; *b*. To alter the order of the lots, & to put up any lot or lots separately or togr in any combinon ; *c*. To withdraw any lot from sale at any time bfe it has been knocked down witht declarg the reserve price." Variation.

2. *Valuations of timber, fixtures, insurance, &c., if required. See* SPECIAL CONDONS, pp. 296 *et seq.*

Deposit (c) and completion.

3. THE [Each] pchaser shl immedly after the sale pay to the auctioneer (*d*) a deposit of £—— p.c. on his pchase-moy & sign an agrmt in the form subjoined & shl pay the residue of the pchase-moy [togr with the amt of the agrd valuon *or* "the price of the fixtures"] to the vendors or as they shl direct on the —— day of —— at the office of the vendors' solors, Messrs. —— at —— at wch time & place the pchase shl be completed (*e*).

Purchaser's lien.

(*c*) As to the purchaser's lien for the deposit, see *Whitbread & Co., Ltd.* v. *Watt*, [1902] 1 Ch. 835.

Payment of deposit.

(*d*) The deposit, for which the auctioneer may (*Farrer* v. *Lacy, Hartland & Co.*, 31 Ch. D. 42) but is not bound to accept payment by cheque: *Johnston* v. *Boyes*, [1899] 2 Ch. 73; is, according to the well-settled rule, held by the auctioneer as stakeholder for both parties: *Harington* v. *Hoggart*, 1 B. & Ad. 577; Dart, 7th ed. 203; Williams, V. & P., 3rd ed. 27, 28, unless it is paid to him under an agreement between the parties that it shall be held otherwise. The conditions sometimes, especially in the provinces, provide that the deposit shall be paid to the vendor's solicitor or some other person authorised by him to receive it. In this case the converse rule applies, and the solicitor or other recipient of the deposit will hold it, in the absence of any agreement between the parties to the contrary, as agent for the vendor and not as stakeholder: *Edgell* v. *Day*, L. R. 1 C. P. 80; *Ellis* v. *Goulton*, [1893] 1 Q. B. 350. If this is not intended the words "as stakeholder for both parties" should be inserted in the condition.

Upon sales by trustees and other persons acting in a fiduciary capacity it is thought that there can be no objection to the employment of an auctioneer upon the usual terms as regards payment of the deposit. See *Edmonds* v. *Peake*, 7 Beav. 239; T. Act 1893, s. 24. Of course on completion it must be paid over to the trustees or other proper parties, whose acknowledgment for the payment of the whole purchase-money will be taken in the usual way. Some practitioners, however, take the precaution in such cases of adding in the condition for payment of deposit, after the word "auctioneer," the words "as agent for the vendors" or, in the case of a sale by a tenant for life the words "as agent for the Settled Land Act trustees"; and this latter form should always be adopted where the sale, being by a tenant for life under his statutory power, the deposit is made payable to the vendor's solicitors. In the case of a company in liquidation the purchase-money and deposit may be made payable to "the liquidator of the vendor Co." In the provinces it is very common for the vendors to exact from the purchaser a fee to the auctioneer and also one for the contract.

(*e*) The equitable doctrine that the time fixed for completion is not of the essence of the contract, and the circumstances under which the purchaser may thereafter give notice limiting a time at the expiration of

4. THE (*f*) outgoings (*h*) will be discharged by the vendors Possession and interest (*g*).

which he will treat the contract as at an end are discussed in *Stickney* v. *Keeble*, [1915] A. C. 386: see also *Hatten* v. *Russell*, 38 Ch. D. 334, and L. P. Act, 1925, s. 41.

For special conditions affording protection to the purchaser pending completion on sale of registered land, see *post*, p. 320, and in the case of unregistered land situate in a compulsory district and land in Yorkshire, see *post*, p. 339.

(*f*) Where a mortgagee in possession sells under his power of sale, the words "rents & profits will be received & the" may be inserted here.

(*g*) Under an open contract the vendor is bound to discharge all outgoings (including a proportionate part only of such as are apportionable by law) down to the time when a good title is *shown*: *Barsht* v. *Tagg*, [1900] 1 Ch. at p. 234; *Re Highett & Bird*, [1902] 2 Ch. at p. 217; [1903] 1 Ch. 287. The stipulation in the condition for apportionment "if necessary" does not limit the liability of the vendor to the payment of outgoings capable of apportionment: *Midgley* v. *Coppock*, 4 Ex. D. 309.

(*h*) Outgoings payable by the vendor under this condition include (1) The cost of works executed, either before or after the date fixed for completion, in accordance with the requirements of a local authority, for the execution of which the vendor became personally liable under a peremptory order made prior to that date: *Tubbs* v. *Wynne*, [1897] 1 Q. B. 74. *Barsht* v. *Tagg*, [1900] 1 Ch. 231, and see *Re Highett & Bird*, [1903] 1 Ch. 287; *Re Allen & Driscoll*, [1904] 2 Ch. at p. 231: (2) The proportion attributable to the property sold of expenses incurred by a local authority for improvements, with which the property has become charged by statute before the date fixed for completion: see *Re Allen & Driscoll*, [1904] 2 Ch. 226. The expenses of works executed by a local authority, under the P. H. Acts, 1848 and 1875, and the Private Street Works Act, 1892, become charged on the property in respect of which they were incurred as from the date of the completion of the works: *Hornsey Local Board* v. *Monarch, &c., Socy.*, 24 Q. B. D. 1; *Stock* v. *Meakin*, [1900] 1 Ch. 683: *Re Allen & Driscoll, sup.*; *Millard* v. *Balby, &c., U. D. C.*, [1905] 1 K. B. 60; *East Ham U. D. C.* v. *Aylett*, [1905] 2 K. B. 22. An improvement rent-charge imposed under the London County Council (Improvements) Act, 1899, s. 61, does not become effective until after a resolution of the Council approving the assessment has been passed: *Re Farrer & Gilbert*, [1914] 1 Ch. 125. (3) Expenses of the kind last mentioned charged on the property before the date of the contract and to which the property is not sold subject. These must in any case be discharged by the vendor: *Re Bettesworth*, 37 Ch. D. 535; *Stock* v. *Meakin*, [1900] 1 Ch. 683.

It may sometimes be desirable to protect the vendor from the incidence of outgoings of the first-mentioned class by special condition: see 58 Sol. J. 383, and f. 8, *post*, p. 347. On the other hand, the purchaser should protect himself against the expense of improvements which, being in the course of execution by the local authority, may become charged on the property after the date fixed for completion, by enquiry before entering into the contract, whether any improvement notices have been given: *Re Leyland & Taylor*, [1900] 2 Ch. 625. As to the registration of local land charges, see L. C. Act, 1925, s. 15.

up to the day fixed for complon, as from wch day all outgoings [in respt of each lot] [*add where the ppty is in hand or the rates are not pd by the tenants,* "includg any rates made but not demanded till after that day"] shl be discharged by & [the rents & profits or] posson (*a*) shl belong to the pchaser [throf], & the [rents, profits &] outgoings shl if necy be apportioned for the ppose of this provon ; but the pchaser [of any lot] shl not be let into the actual posson or rect of the rents & profits until the complon of the pchase [& the pchaser shl on complon pay to the vendors their proportion of the current rents, less their proportion of current outgoings]. If from any cause whatever other than the wilful default of the vendors, the pchase [of any lot] shl not be completed on or bfe the day fixed for complon, the pchaser [making default] shl pay to the vendors intt (*b*) on the balance of the pchase-moy [& the amt of the afsd valuon], at the rate of £—— p.c. p.a. from that day until the complon of the pchase (*c*), & shl not

(*a*) The word "possession" standing alone means possession as opposed to reversion unless the property is described as reversionary : *Lake* v. *Dean*, 28 Beav. 607, and is appropriately used where the property is in hand without the additional words "rents & profits." If so employed, a reference in the particulars of property offered for sale "with vacant possession" to a lease expiring on the day fixed for completion will not, therefore, entitle the purchaser to any benefit which the reversion might carry : see *Re Edie and Brown's Contract*, 58 L. T. 307 ; *Re Lyne-Stephens and Scott-Miller's Contract*, [1920] 1 Ch. 472.

As to interest on purchase-money.

(*b*) As to the payment of interest, see Williams, V. & P., 3rd ed. 47, 491 *et seq.* In the absence of the proviso in the final brackets, the purchaser cannot escape from the condition by setting apart and depositing the unpaid purchase-money in a bank at interest, so as to restrict the vendor to the interest allowed on the deposit : *Re Riley*, 34 Ch. D. 386. For examples of wilful default see *Re Young and Harston*, 31 Ch. D. 168 ; *Re Wilson & Stevens*, [1894] 3 Ch. 546 ; *Re Strafford & Maples*, [1896] 1 Ch. 235 ; and of conduct which was not wilful default, see *Re Woods & Lewis*, [1898] 2 Ch. 211 ; and see *Bennett* v. *Stone*, [1903] 1 Ch. 509 ; *Re Bayley-Worthington & Cohen*, [1909] 1 Ch. 648. As to the meaning of "the purchaser in default" which is sometimes used in this condition, see *Jones* v. *Gardiner*, [1902] 1 Ch. 191. In the absence of condition the purchaser must pay interest on the purchase-money and the vendor must account for the rents received by him from the time when a good title was first shown : *Barsht* v. *Tagg*, [1900] 1 Ch. at p. 235 ; cf. *Halkett* v. *Dudley*, [1907] 1 Ch. at p. 606. As to the vendor's duty in regard to rents in arrear at the date of the contract but received by him while in possession after the date fixed for completion : see *Plews* v. *Samuel*, [1904] 1 Ch. 464.

Option to

(*c*) *I.e.*, until the purchase-money is paid, see *Lewis* v. *S. W. Rly. Co.*, 10

be entitled to any compenson for the vendors' delay or orwise (*d*), but this stipulon is witht prejudice to the vendors' rights under any other of these condons. [PROVD THAT if the delay in complon shl arise from any cause other than the default or neglect of the pchaser, & if he shl at his own risk pay the balance of the pchase-moy [& the amt of the valuon when ascertained] into a bank on a deposit acct bearing intt at the current rate, & shl give written notice throf to the vendors or their solors, intt on such pchase [& valuon] moy shl not be payable by the pchaser after the date of such notice at a higher rate than that allowed by the bank except durg any delay thrafter occasioned by the default or neglect of the pchaser].

[*Provision as to insurces, & as to ppty being at the risk of the pchaser, see* p. 333.]

5. THE ppty [Each lot] is subjt to the lease *or* [the sevl leases & tenancies] & to the rts, easemts & restrictive covts [*or as the case may be*] mentd in the parlars as affecting the same; & is also subjt to a right of way [certain restrictive covts *or as the case may be, stating specifically by reference to the deed creating it, each right in the nature of an incumbrance which is not*

Statement of incumbrances and offer of inspection of documents (*a*).

Hare, 113. The following is sometimes added here:—"Or the vendors shl have the option of takg the rents & profits (less outgoings) [apportioned] up to the actual day of complon in lieu of intt as afsd." See *Barsht* v. *Tagg*, [1900] 1 Ch. 231.

vendors to take rents in lieu of interest.

(*d*) As to the purchaser's right to compensation for the vendor's delay, or for the deterioration of the property, or any other loss through his default, see 16 Sol. J. 394; *Royal, &c., Society* v. *Bomash*, 35 Ch. D. 390; *Rowe* v. *London School Board*, 36 Ch. D. 619; *Re Wilson & Stevens*, [1894] 3 Ch. 546. It may be proper in some cases to protect the vendors in this respect by a more express condition.

Compensation for vendor's delay, &c.

(*a*) A later condition protects the vendor from misdescription owing to the omission from the particulars or conditions of rights and easements of which he is unaware at the date of the contract: see *post*, p. 259. The object of the condition in the text is in the first place to supply the defect of any accidental omission from the particulars of a statement (which they ought to contain, *ante*, p. 234, note) of the incumbrances subject to which the property is sold; and secondly, to substitute an offer of inspection and production for actual notice of their precise nature and effect: see *Cox* v. *Coventon*, 31 Beav. at p. 388; *Dougherty* v. *Oates*, 45 Sol. J. 119; *Re White & Smith*, [1896] 1 Ch. 637. The purchaser is entitled to full disclosure of all such incumbrances: *Hardman* v. *Child*, 28 Ch. D. 712 (case of obligation to repair wall); *Re Higgins & Hitchman*, 21 Ch. D. 95; *Re Davis*, 40 Ch. D. 601; *Re Ebsworth & Tidy*, 42 Ch. D. 23; *Pemsel* v. *Tucker*, [1907] 2 Ch. 191; *Hone* v. *Gakstatter*, 53 Sol. J. 286

Object of condition.

Right of purchaser to disclosure of incumbrances.

mentioned in the particulars (*b*)]. The counterpart of the sd lease *or* [Counterparts or copies of the leases or written agrmts

(cases of restrictive covenants); even though their origin was anterior to the root of title: *Phillips* v. *Caldcleugh*, L. R. 4 Q. B. 159; *Re Cox & Neve* [1891] 2 Ch. 109; and of all facts constituting a latent defect of title and materially affecting the property for the purpose of the contract: *Carlish* v. *Salt*, [1906] 1 Ch. 335 (party wall notice), and see *Re Leyland & Taylor*, [1900] 2 Ch. 625; *Re Farrer & Gilbert*, [1914] 1 Ch. 125; *Yandle & Sons* v. *Sutton*, [1922] 2 Ch. 199. As to the rule in regard to latent defects which are not defects in title, see *Shepherd* v. *Croft*, [1911] 1 Ch. 521, and *post*, p. 260, note.

Agreement preventing acquisition of easement.

An agreement by which the vendor is prevented from acquiring by prescription an easement of light over adjoining property is not an incumbrance of which the purchaser is entitled to disclosure: *Smith* v. *Colbourne*, [1914] 2 Ch. 533; but the vendor should protect himself by express condition against personal liability for any affirmative covenant which may be contained in such an agreement: see *post*, p. 256, note (*h*).

A mere statement that a lease exists is not notice to the purchaser of anything in the nature of the tenancy which affects the property sold: *Caballero* v. *Henty*, L. R. 9 Ch. 447, and cf. *Re White & Smith*, [1896] 1 Ch. 637; *Molyneux* v. *Hawtrey*, [1903] 2 K. B. 487.

Reference must be specific.

A general statement (such as is invariably inserted in conditions of sale but for a different purpose, see *post*, p. 261, note (*a*)) that the property is sold subject to "any existing easemts or rights" (*Heywood* v. *Mallalieu*, 25 Ch. D. 357; *Simpson* v. *Gilley*, 92 L. J. (Ch.) 194), or to "any matter or thing affecting the same" (*Nottingham, &c., Co.* v. *Butler*, 16 Q. B. D. 778) is not sufficient to enable the vendor to obtain specific performance subject to incumbrances of which he was or ought from the state of the title to have been aware at the date of the contract.

Restrictive covenants.

Restrictive covenants should either be set out in full or an indication of their nature should be given in the particulars or conditions accompanied, as in the text, with an offer of inspection and production. The vendor should not rely upon an epitomised statement of the effect of such covenants unaccompanied by any such offer.

Easements.

Easements to which the property is subject may have arisen either (1) under a deed of grant, (2) by reservation to the vendor in a former conveyance, (3) by express or implied grant (see *Pwllbach Colliery Co., Ltd.* v. *Woodman*, [1915] A. C. at p. 646), or reservation (see *Cory* v. *Davies*, [1923] 2 Ch. 95), on a former sale of adjacent property by a common owner who may be the vendor himself or some predecessor in title of the vendor, or (4) by devise of adjacent property under the will of a common owner: *Schwann* v. *Cotton*, [1916] 2 Ch. 459.

Easements expressly granted or reserved should be stated specifically in the above condition as "a right of way granted by deed of grant over pt of the ppty in the year—" *or* "certain rights of way,

(*b*) See note (*a*), *supra*; and see forms of special conditions applicable to various rights, *post*, pp. 340, 341. If the particulars are properly drawn it is of course unnecessary to supplement the general reference to rights therein mentioned with which this condition commences.

(if any) with the tenants] [& of all material correspondence with and other documents affecting the rights of tenants under the Agricultural Holdings Act, 1923 [the Small Holdings & Allotments Acts, 1908 to 1919, the Allotments Act, 1922] or any other statute (*c*)] & copies of the deeds containing grants [or reservons] of rights & easemts or restrictive covts (*a*) will be produced at the sale & may be inspected at the office of the vendors' solors at any time within — days previously; & the pchaser (whether availing himself of such opportunity of

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water, *or as the case may be,* reserved by a convce on a former sale" *or* "on the sale of the ppty to the vendor." Easements of adjacent owners created by implied grant on severance by the vendor or some person to whose acts his covenants for title will extend should be made the subject of special condition as in f. 12, *post*, p. 342, which may follow the general condition in the text. The vendor is sufficiently protected by the general reference to rights and easements contained in condition 22, *infra*, p. 259, against any easements which, having been created on severance by persons to whose acts the vendor's covenants for title will not extend, do not appear upon the title.

Easements arising out of unity of ownership.

Occasionally the sale is made subject to a mortgage which it is not intended to discharge, or to a legal rentcharge. In that case add as a separate condition, "The ppty is [also] subjt to a mtge for £—— & intt at £—— p.c. p.a., payable half-yrly, [*or*, 'to a rentcharge of £—— p.a.], wch sd ppal sum & the intt thron from the —— day of ——, [*or*, 'wch sd rentcharge] from the —— day of ——,' shl be pd by the pchaser & the vendors shl be indemnified thfrom by the pchaser's covt, to be contd in the convce, a duplicate whrof shl be prepared & executed by the pchaser at his expense." The expedient of selling subject to an annuity may be had recourse to where it cannot be released except by means of the L. P. Act, 1925, s. 50, or the S. L. Act, 1925, s. 69; or where the expense of proceeding under the first-mentioned Act would be prohibitive. See the special form of condition for an annuity created for value in money's worth, *post*, p. 339.

Sale subject to mortgage or rentcharge.

For special conditions of sale in lots subject to rent charges or chief rents to be apportioned between the several lots, see *post*, pp. 379 *et seq.*

(*c*) The words in this bracket are inserted with a view to avoid any possible objection founded on surprise or hardship: see 54 Sol. J. 266. Where a claim for compensation for improvements made with the consent in writing of the landlord given pursuant to the Act arises after the date fixed for completion, such consent becomes a term of the tenancy and under the above condition fixing the purchaser with notice of the terms of tenancies is payable by the purchaser: *Re Earl of Derby & Fergusson*, [1912] 1 Ch. 479. See, too, *Dale* v. *Hatfield Chase Corpn.*, [1922] 2 K. B. 282.

(*a*) If there is but one such deed say "and a copy of the deed of grant" *or* "convce referred to."

inspection or not) shl be deemed to have full notice of the contents of all such documts & the nature & extent of the rights, easemts & restrictive covts affecting the ppty sold (whether resply of a usual character or not) & of the terms of the tenancies (*b*) notwithstdg any partial, incomplete, or inaccurate statemt of such contents or of the effect throf or of the terms of the tenancies in the parlars or these condons [& shl also be deemed to have notice of the state of the ppty as to repairs, insce, party-walls [drainage], & all other matters (*c*).] [In any case in wch the vendors have no counterpt or copy of the lease, agrmt of tenancy, [correspondence or other document affecting the rights of the tenant as afsd] or there is no written agrmt, the pchaser shl be satisfied with such evidence of the terms of the tenancy as the vendors may be able to adduce].

[*Provision as to rights or easements to be reserved or conditions imposed in favour of vendors. See* RESERVATIONS, pp. 349 *et seq.; and* RESTRICTIONS, pp. 353 *et seq., adding in their appropriate places such further provisions selected from the latter heading as the case may require.*]

Apportionment of incoming rents (*d*).

6. WHERE more than one lot or pts of more than one lot are subjt to the same lease or tenancy, the rent mentd in the parlars shl be apportioned as the rent incident to the reversion throf, & the respive pchasers shl not require the consent of any tenant to such apportionmt or require such rent to be legally apportioned.

7. *Condons as to commencemt & evidence of title, abstract, &c., see* pp. 299 *et seq.*

Recitals evidence (*e*).

8. EVERY deed & documt dated —— yrs or upwards prior

(*b*) See note (*c*), *supra*. The purchaser is entitled notwithstanding this condition to an abstract or copies of all leases granted subsequently to the time fixed for the commencement of title : *Bond* v. *Basset*, 87 L. J. Ch. 160.

(*c*) As to the words in this bracket, see *Re Terry & White*, 32 Ch. D. at pp. 23, 24. Williams V. & P., 3rd ed., 576.

(*d*) See *ante*, p. 66, note (*e*). And see another form, *post*, p. 346, form 6 (the concluding paragraph).

As to recitals being evidence.

(*e*) This condition may in general be omitted in reliance on the L. P. Act, 1922, s. 45 (6), unless it is extended to documents less than twenty years old, or, the parts in brackets are required : see *ante*, p. 238. It should not without reason be extended to recent documents ; and sometimes, especially where a document is of an *ex parte* nature (such as a disentailing deed, or a deed enlarging a long term), its nature ought to be stated.

to the day of sale [& every pchase or mtge deed of whatever date] shl be conclusive evidence of everythg recited, stated, noticed, assumed or implied thrin [& of the contents & due exon of every deed or other documt recited, stated, or noticed thrin & of wch neither the origl, nor an attested copy, nor a covt for production, is in the vendors' posson, & also that such recited, stated, or noticed deed or documt contd no other matter material to the title.]

Identity (*f*).

9 (A). The [Each] pchaser shl [notwithstdg any discrepancies or varions in names, quantities, measuremts, boundaries, abuttals, contour or orwise] admit the identity of the ppty [lot pchased [by him] with that comprised in the munimts upon the evidce afforded by a comparison of the descriptions in the parlars & munimts & plans thto (if any) [& a statutory declaron to be made, if required, at the pchaser's expse, that the ppty [such lot] has been enjoyed, accdg to the title shown, for [20] yrs or upwards prior to the day of sale [*or* "from the date from wch the title thto is to be deduced accdg to these condons"]].

The same. Another form (*g*).

9 (B). The vendors shl not be required to furnish any evidce of the identity of the psnt with any former description of the ppty [any lot] beyond what may be afforded by the munimts themselves, nor to reconcile differg descriptions [nor to distinguish the pts of the ppty held under different titles].

Expenses (*h*).

10. The expse of producg such munimts of title as are in the posson of mtgees whom the vendors are entitled to redeem for the ppose of verifyg the abstract shl be borne by the vendors.

Registration (*a*).

[11. No objection or requon shl be made on acct of the non-registron in the county register of any deed, will, or other documt.]

Stamps on docu-

12. No objection or requon shl be made on the ground that any documt executed or order of Court made (if any such

(*f*) See other forms in SPECIAL CONDITIONS, *post*, p. 348.

(*g*) As to the effect of this condition, see *Curling* v. *Austin*, 2 Dr. & Sm. at p. 135.

(*h*) See L. P. Act, 1925, s. 45 (4), and cases cited, *ante*, p. 239.

As to registration.

(*a*) As to such registration it seems better to bar the right to require it (as it may not admit of being done), than merely to throw the expense on the purchaser: see *Girling* v. *Girling*, 30 Sol. J. 238.

ments of title (*b*).

there be) bfe the 17th May, 1888, is not stamped or is insufficiently stamped, but this condon shl not preclude the [any] pchaser from requiring the same to be stamped at his own expense.

[*Condition as to estate duty in respect of timber, trees, and wood, and succession duty in respect of woodlands payable on the occasion of the sale under Fin.* 1909–10 *Act*, 1910, s. 61 (5), as amended by Fin. Act, 1912, s. 9. *See* SPECIAL CONDITIONS, p. 310.]

Conveyance (*c*).

13. ON paymt of the balance of the pchase-moy [togr with the amt of the afsd valuation] the [each] pchaser shl be entitled to a pper assurce of the ppty [lot or lots pchased by him] from the vendors & all other necy pties (if any) such assurce (*d*) to be prepared by & at the expse of the pchaser (*e*) [who shl also bear the expse of the perusal & execution thereof by or on behalf of all pties other than the vendors [& their mtgees] [& the draft throf shl be left not less than —— days & the engrossmt throf not less than 10 days bfe the sd —— day of —— at the office afsd, for perusal & exon resply by the vendors & other conveyg pties, if any].

[**14.** THE [Each] pchaser shl forthwith be regrd under the

(*b*) The Stamp Act, 1891, s. 117, precludes the condition from being extended beyond the date mentioned: see *ante*, p. 239. The Finance Act, 1898, s. 6, which is retrospective, *Re Lovell & Collard*, [1907] 1 Ch. 249, provides that a conveyance on sale shall include a foreclosure order, which appears to be in accordance with the prior law: *I. R. Commrs.* v. *Tod*, [1898] A. C. 399.

(*c*) Even where the vendor will not remain under any liability, the purchaser is bound to take a conveyance: see the cases collected in *Re Cary-Elwes*, [1906] 2 Ch. 143.

(*d*) The L. P. Act, 1925, s. 42, renders void stipulations throwing on the purchaser the cost of tracing and getting in outstanding legal estates, obtaining a vesting order or preparing, stamping or executing a vesting instrument. The words in former editions throwing the costs on the purchaser are therefore omitted here. The words in the subsequent bracket limiting a time for leaving the conveyance for execution are usually inserted, but are practically of little, if any, use.

Districts where registration is compulsory.

(*e*) In places where registration is compulsory, but the land is not registered, and the conveyance to the purchaser is not to contain any provision for the benefit of the vendor, say here "or shl be entitled at the option of the pchaser to require the vendors to consent to any applicon made by the pchaser to be regrd or to have regrd in his stead any nominee or nominees as proptor or proptors under the L. R. Act, 1925, of the ppty [lot or lots pchased by him]."

L. R. Act, 1925, as proptor of the ppty [lot or lots pchased by him], & shl produce the Land Certfe to the vendors' solors within 14 days after complon as evidence that he has been so registered.] [Purchaser to be registered (*b*).]

15. The vendor[s] is [are] sellg as tenant for life [statutory owners] under the powers conferred by the Settled Land Act, 1925, [as trees for sale of the ppty] [as mortgagees (*c*) *or* "as executors" (*d*) in exercise of their paramount powers, *or as the case may be*] & shl not be required to enter into any covt for title except the usual implied statutory covt that he has [they resply have] not incumbered (*f*). [Any pson joing in the convce as a necy consentg party shl not be required to enter into any covt except that he has not done anything to prevent his so consentg.] [A statemt by the vendors that they have not given or made an assent or convce in respt of the land wch is devised by their testator's will shl be contd in the convce to the [each] pchaser (*g*).] As to covenants on sale by fiduciary owners (*e*). Consenting party.

[**16.** The vendors will after complon remain psonally liable upon [a covt for indemnity in respt of] certain covts & stipulons for the repair or for contributing to the repair of roads, Indemnity of vendors in respect

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(*b*) This condition should be inserted if the land is in a compulsory district but is not registered, and if the owner of the legal estate remains under any liability.

(*c*) See L. P. Act, 1925, ss. 88, 89, 104.

(*d*) See Adm. of Este. Act, 1925, s. 39.

(*e*) See L. P. Act, 1925, s. 2. Instruments relating only to interests or powers which will be overreached by the conveyance will not be abstracted (L. P. Act, 1925, s. 10); and the concurrence in the conveyance of the owner of any such interest or power cannot be required. If, on the other hand, there is subsisting an equitable interest which is protected by registration as a landcharge and is incapable of being overreached, any stipulation that the purchaser shall not require the concurrence of the owner of such interest or the cancellation of the registration is void: L. P. Act, 1925, s. 43. A purchaser cannot be compelled to accept a title made with the concurrence of the owner of an equitable interest if title can be made discharged therefrom either (a) under a trust for sale or (b) under the L. P. Act, 1925, or the S. L. Act, 1925, or any other statute: L. P. Act, 1925, s. 42.

(*f*) The above exclusion of the liability of trustees, mortgagees, and other fiduciary vendors to enter into any covenants for title, except against their own incumbrances, as it expresses only what is the perfectly settled rule where the character in which they are selling is stated (see Dart, 7th ed. 142, 573, Williams, V. & P., 3rd ed. 69), may be omitted, but it is very common to insert it. As to trustees' covenants for title.

(*g*) See Adm. of Este. Act, 1925, s. 36 (6).

of continuing liability under affirmative covenants (*h*).

ways, passages, bridges, sea-walls, dykes, sewers, drains, gutters, fences, *or as the case may be,* & other like matters contd in the convce on sale to them of the ppty. A copy of the deed containing such covts & stipulons *or* "convce" may be inspected at the office of the vendors' solors at any time [within — days] prior to the sale; & the purchaser shl in the convce to him of the ppty covt with the vendors to indemnify them from all liability in respt throf [& in respt of the restrictive covts & condons to wch the ppty is subjt as afsd] & further by way of indemnity (but not orwise) to observe & pform such covts, stipulons, & condons.]

17. *Custody of title deeds & acknowemt & undertaking as to production, &c., if required, see* SPECIAL CONDONS, pp. 370 *et seq.*

[*Conditions as to land tax & tithe rent charge where the ppty is sold free. See* SPECIAL CONDITIONS, p. 345.]

Apportionment and evidence of rents and outgoings (*a*).

[**18.** THE pchaser shl not require any rent or outgoings affecting the ppty sold [lot pchased by him] & other ppty to be apportioned, or call for any evidence not in the vendors' posson as to the origin or creation throf or orwise in respt throf, or require any indemnity against any pt throf wch ought to be borne by other ppty.]

(*h*) The burden of an affirmative covenant does not, as between vendor and purchaser, run with the land: *Austerberry* v. *Oldham Corpn.*, 29 Ch. D. 750, and see *post*, p. 354. The property cannot, therefore, be conveyed nor the sale made subject to any continuing liability of the vendor thereunder. Such liability may have arisen either directly under an express covenant by the vendor to repair, &c., or indirectly under the vendor's covenant for indemnity against an existing liability to repair or to indemnify in respect of repairs. In either case an indemnity from the purchaser if required must be expressly stipulated for; but the vendor is entitled apart from condition to an indemnity against restrictive covenants to which the property is expressly sold subject. Before putting the property up for sale the vendor should consider the possibility of obtaining the discharge or modification of the restrictive covenants by the machinery of s. 84 of the L. P. Act, 1925.

(*a*) For a special form applicable to the case of property sold in lots, each lot being described in the particulars as subject only to a proportionate part of outgoings affecting the whole property: see *post*, p. 346.

The vendor is not bound to procure the apportionment of land tax and tithe rent charge to which the property is presumed to be subject; and it falls to the purchaser after completion, if necessary, to see that the property is separately rated: Williams, V. & P., 3rd ed. 670, and see *Re Ebsworth & Tidy*, 42 Ch. D. 23.

[19. After the pchaser [of any lot] shl have given notice in writg to the vendors' solors that he accepts the title, the vendors shl, at the request & cost of the [such] pchaser, give to the tenant of the ppty [lot purchased by him] such notice to quit as will terminate his tenancy on the first day on wch it can be legally determined after such request, whether the ppty [lot purchased] be the whole or pt of the holding of the tenant, & in the latter case whether the residue of such holding be sold to another pchaser or not (*c*).] Notice to tenants (*b*).

20. Within 14 days after the delivery of the abstract (*d*) the [each] pchaser shl furnish to the vendors' solors a statemt in writg of his objections & requons (if any) arisg on the abstract, parlars, or condons (*e*) [& within 7 days after the delivery of the vendors' replies thereto the pchaser shl furnish Requisitions.

(*b*) In the case of agricultural property held by a tenant from year to year, a notice to quit given preparatory to sale, is rendered nugatory if a sale takes place during the currency of the notice unless, previously to the sale, the tenant has agreed in writing that the notice shall be valid: see Agricultural Holdings Act, 1923, s. 26.

As to the tenant's right to compensation for disturbance, see Agricultural Holdings Act, 1923, s. 12.

(*c*) See *Re Bebington's Tenancy*, [1921] 1 Ch. 559. The difficulty in that case is now met by L. P. Act, 1925, s. 140 (2), which provides that after severance of the reversion notice to quit may be given by the owner of a severed part, but the tenant may within one month give a counter-notice determining the lease in respect of the rest of the land.

(*d*) *I.e.*, a perfect abstract, meaning in this context as complete an abstract as the vendor can from the documents in his actual or constructive possession supply: *Hobson* v. *Bell*, 2 Beav. 17; *Morley* v. *Cook*, 2 Hare, at p. 111; *Steer* v. *Crowley*, 14 C. B. (N. S.) at p. 359; Dart, 7th ed. 138, although it may show a defective title: *Pryce-Jones* v. *Williams*, [1902] 2 Ch. 517. The condition does not apply to an objection which goes to the root of the title: *Want* v. *Stallibrass*, L. R. 8 Exch. 175; nor to an objection to title being made otherwise than in accordance with the provisions of s. 42 of the L. P. Act, 1925, that section rendering void any stipulation purporting to bind a purchaser to accept a title otherwise than in accordance with its provisions, and overruling to this extent *Re Deighton & Harris*, [1898] 1 Ch. 458. It is advisable not to limit a time for delivery of the abstract: see *Upperton* v. *Nickolson*, L. R. 6 Ch. 436; *Re Todd & McFadden*, [1908] 1 Ir. R. 213. As to the right of the purchaser to rescind on non-delivery of an abstract within a reasonable time, see *Compton* v. *Bagley*, [1892] 1 Ch. 313; *Re Bayley & Shoesmith*, 87 L. J. Ch. 626. Delivery of abstract.

(*e*) As to these words, see *Re Terry & White*, 32 Ch. D. at pp. 24, 25. Although the condition be limited to objections to title, an error which falls within the compensation clause may nevertheless fall within this condition also. It is a question of fact in each case: *Ashburner* v. *Sewell*, [1891] 3 Ch. 405: see also *Re Jackson & Haden*, [1906] 1 Ch. at p. 422.

to the vendors' solors a statemt in writg of his further objections or requons (if any) arisg on such replies]; & every objection or requon not so stated shl be considered as waived. For the ppose of this condon an abstract shl be deemed perfect if it supply the informon suggestg the objection or requon although orwise defective, & if no objection or requon is so stated, the title shl be considered as accepted (*f*); & in these respts time shl be deemed of the essence of the contract.

Rescission clause (*h*).

21. If the [any] pchaser shl make & insist (*g*) on any objection or requon, either as to title, convce, or any matter

(*f*) See *Want* v. *Stallibrass*, L. R. 8 Ex. 175; *Re Tanqueray-Willaume & Landau*, 20 Ch. D. 465; and 19 L. Q. R. 161, 168.

(*g*) As to these words, see note (*h*), *infra*.

As to rescission clause.

(*h*) The rescission clause is now practically universal on sales by auction, and is very commonly insisted on by vendors on sales by private contract. The vendor will not be allowed to take advantage of it to delay the purchase and thus afford an opportunity for entering into another bargain in the meanwhile: *Smith* v. *Wallace*, [1895] 1 Ch. 385. Though extending to requisitions (other than such as may be necessary for the enforcement by the purchaser of any right conferred by the L. P. Act, 1925, s. 42) with which the vendor is unable or "unwilling" to comply, the clause does not give the vendor power to rescind arbitrarily, *i.e.*, without any reasonable cause: *Quinion* v. *Horne*, [1906] 1 Ch. 596; *Re Des Reaux & Setchfield*, [1925] W. N. 353; nor do the words "on the ground of difficulty, delay or expense," &c., inserted in the present form appear to carry the case for rescission much further: see *Re Weston & Thomas*, [1907] 1 Ch. 244.

A vendor with no title, or a radically bad one, cannot avail himself of such a condition: *Nelthorpe* v. *Holgate*, 1 Coll. C. C. 203; *Bowman* v. *Hyland*, 8 Ch. D. 588; *Re Deighton & Harris*, [1898] 1 Ch. 458; even though the contract contains a stipulation that the title be accepted: *Re Haedicke & Lipski*, [1901] 2 Ch. 666. In order that he may do so, the conduct of the vendor must be free from the element of recklessness as distinguished from actual fraud or dishonesty: *Re Jackson & Haden*, [1906] 1 Ch. 412; but recklessness is not necessarily to be implied in every case in which a perusal of the title would have disclosed the true facts; *Re Simpson & Moy, Ltd.*, 53 Sol. J. 376; *Merrett* v. *Schuster*, [1920] 2 Ch. 240; *Procter* v. *Pugh*, [1921] 2 Ch. 256; cf. *Re Milner & Organ's Contract*, 123 L. T. 168. A serious defect of title should of course be the subject of a special condition. As to the effect of a purchaser being released from his contract on a sale by the Court, see *Holliwell* v. *Seacombe*, [1906] 1 Ch. 426.

If the right to rescind is reserved, in case the purchaser makes and insists on the requisition, the vendor cannot rescind without first answering it: *Turpin* v. *Chambers*, 29 Beav. 104; *Duddell* v. *Simpson*, L. R. 2 Ch. 102; but where the words "and insist on" are absent, the vendor may rescind summarily on the making of the requisition: see *Re Glenton*, 53 L. T. 434; *Re Starr Bowkett, &c.*, 42 Ch. D. 375, and remarks thereon, 33 Sol. J. 434; *Woolcott* v. *Peggie*, 15 App. Cas. 42. The condition should give the

appearg on the parlars (*a*), condons or abstract, or orwise (not being necy for the enforcemt of any right under either of ss. 42 or 125 of the L. P. Act, 1925 (*b*)) wch the vendors shl be unable or [on the ground of difficulty, delay, or expse, or on any other reasble ground (*c*)] unwillg (*d*) to remove or comply with, the vendors shl, notwithstdg any previous negotion or litigon (*e*), be at liberty on givg to the pchaser not less than ten days' notice (*f*) in writg to annul the sale, in wch case, unless the objection or requon shl have been in the meantime withdrawn, the sale shl, at the expiron of the notice, be annulled, the pchaser being in that event entitled to a return of the deposit, but witht intt, costs, or compenson (*g*).

22. The ppty [Each lot] is believed & shl be taken to be Misdescription not to annul sale (*h*).

purchaser, as above, a reasonable opportunity of withdrawing the requisition: *Re Dames*, 29 Ch. D. 626; Dart, 7th ed. 173. The vendor cannot rescind because the purchaser refuses to express in his conveyance that he takes subject to conditions not mentioned in the particulars or abstract: *Re Monckton & Gilzean*, 27 Ch. D. 555.

(*a*) See *ante*, p. 257, note (*d*).

(*b*) See ss. 42 (8) and 125 (3), and preliminary note, *ante*, p. 234.

(*c*) See note (*h*), *supra*.

(*d*) See note (*h*), *supra*.

(*e*) As to the vendor's right to rescind after the commencement of litigation, see Dart, 7th ed. 177; *Isaacs* v. *Towell*, [1898] 2 Ch. 285, citing *Re Arbib & Class*, [1891] 1 Ch. 601; *Quigley* v. *M'Clay's Contract*, [1918] 1 Ir. R. 347; *Procter* v. *Pugh*, *sup.* As to the costs of litigation, see *Duddell* v. *Simpson*, L. R. 2 Ch. 102; *Isaacs* v. *Towell*, [1898] 2 Ch. 285; *Re Spindler & Mear*, [1901] 1 Ch. 908.

(*f*) A letter written "without prejudice" is not sufficient notice within this condition: *Re Weston & Thomas*, [1907] 1 Ch. 244.

(*g*) If there is no deposit, say, "& the vendors shl not be liable to pay to the pchaser any costs or compenson." The following is sometimes added, "& thrupon the contract & abstract & all documts delivered by either party to the other shl be returned." Variation where no deposit.

(*h*) This condition introduces in express terms as part of the original bargain, a variation of the contract to meet the case of a discrepancy appearing between the property as elsewhere described in the contract and the property offered for conveyance by the vendor as answering that description.

In the absence of any such condition the Court has inherent power to grant or refuse specific performance: *Re Fawcett & Holmes*, 42 Ch. D. at p. 157; *Rutherford* v. *Acton-Adams*, [1915] A. C. 866, 870; but in that case if specific performance be granted, it is a contract *cy près* and not the original contract which is enforced: *Rudd* v. *Lascelles*, [1900] 1 Ch. at p. 818.

correctly described as to quantity & orwise (*i*) & is sold

The condition will not avail the vendor against the purchaser's equitable right of rescission where the misdescription, although not proceeding from fraud, is in a material and substantial point so far affecting the subject matter of the contract that it may reasonably be supposed, that, but for such misdescription, the purchaser might never have entered into the contract at all: *Flight* v. *Booth*, 1 Bing. N.C. at p. 377; *Lee* v. *Rayson*, [1917] 1 Ch. 613; nor will it avail the vendor to enforce the contract if he has materially misled the purchaser, the rule being that a less serious misleading is sufficient to enable a purchaser to resist specific performance than is required to enable him to rescind the contract: *Re Terry & White*, 32 Ch. D. at p. 29.

As to the purchaser's equitable right of rescission for misrepresentation generally, see *Armstrong* v. *Jackson*, [1917] 2 K. B. 822, at p. 825, and cases there cited; and where the lots purchased are complicated, see *Holliday* v. *Lockwood*, [1917] 2 Ch. 47.

A defect in title is generally speaking a material defect within *Flight* v. *Booth*, 1 Bing. N. C. 370, and in any case is not a proper subject for compensation: *Re Neale & Drew*, 41 Sol. J. 274; *Debenham* v. *Sawbridge*, [1901] 2 Ch. at p. 108, and see *Cato* v. *Thompson*, 9 Q. B. D. at p. 618; and a defect of any sort which is within *Flight* v. *Booth* is *a fortiori* not a matter for compensation: see *Re Puckett & Smith*, [1902] 2 Ch. 258; *Lee* v. *Rayson*, *sup.*; *Re Courcier and Harrold's Contract*, [1923] 1 Ch. 565.

Where a good holding title is offered, the vendor may successfully resist a claim for rescission: *Nottingham, &c., Co.* v. *Butler*, 16 Q. B. D. 778, and see *Re Scott & Alvarez*, [1895] 2 Ch. 603.

Within the limits above mentioned, a discrepancy in the quantities (*Re Fawcett & Holmes*, 42 Ch. D. 150; *Aspinalls to Powell*, 60 L. T. 595; and cf. *Jacobs* v. *Revell*, [1900] 2 Ch. 858), a latent right of way (*Ashburner* v. *Sewell*, [1891] 3 Ch. 405), a reservation of mines (*Re Jackson & Haden*, [1906] 1 Ch. 412, a purchaser's action), and a physical defect (*Shepherd* v. *Croft*, [1911] 1 Ch. 521, and cf. *Re Puckett & Smith*, *sup.*) have been held to fall within the compensation clause, and in the case of a physical defect none the less so because the vendor was aware of it.

Ordnance map.

(*i*) It is becoming a common practice to annex to the particulars and conditions a sale plan prepared from the ordnance survey in preference to the tithe apportionment map; and the former is used in the Land Registry for the registration of titles, Rules, 272 to 285. The ordnance map is not and was never intended to be evidence of boundaries (4 & 5 Vict. c. 30, s. 12; see *Caton* v. *Hamilton*, 53 J. P. 504; *Coleman* v. *Kirkaldy*, [1882] W. N. 103; *Bidder* v. *Bridges*, 34 W. R. 514; see also *Mercer* v. *Denne*, [1905] 2 Ch. 538); the acreage in all cases being measured between hedges from the stake of each hedge without regard to the ownership of the hedge and any intervening ditch: Elph. Introd., 6th ed. 97: see *Collis* v. *Amphlett*, [1918] 1 Ch. 232, at p. 247, reversed [1920] A. C. 271. Where, therefore, reference is made in the particulars of conditions to a plan prepared from the ordnance survey map or to the numbers printed on the ordnance survey map in such a manner as to incorporate the plan or the ordnance map in the description of the property to be sold, it is obvious that discrepancies may occur between the quantities as described in the particulars (apart from references to

subjt (*a*) to all chief, quit & other rents & outgoings & to all incidents of tenure, rights of way & other rights & easemts (if any) affecting the same ; & if any error, misstatemt, or omission

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the plan or ordnance map) and the muniments to which the particulars relate, on the one hand, and the quantities to be deduced from the position of the boundaries as marked on the plan or ordnance map on the other hand. Where a plan is annexed, the difficulty is usually met by printing thereon a statement that it is intended for reference only and is not guaranteed as being accurate as to boundaries: see *Re Lindsay*, 72 L. T. 832. If there is no such statement upon the plan, or if the reference in the particulars is to the numbers given in the ordnance map, the condition in the text should be prefaced as follows: "The ppty is sold according to the descron throf in the parlars & these condons subjt to the qualificon that any reference thrin contd to the annexed sale plan (wch has been prepared from the Ordnance Survey Map dated —— & is only intd to show the position of each lot) *or* "to the numbers upon the Ordnance Survey Map." shl not in relation to the dimensions & boundaries of the ppty be deemed to form pt of the descron throf. Subjt as afsd the ppty, &c.," *continue* f. 22, p. 259.

This qualification while safeguarding the vendor from including in the sale of any lot a hedge and ditch not intended to be included therein, will not preclude the purchaser from requiring a conveyance in accordance with a plan: *Re Sansom & Narbeth*, [1910] 1 Ch. 741; *Re Sparrow & James*, [1910] 2 Ch. 60.

Care should be taken in referring to an ordnance map to state what edition is referred to, as the numbers of reference are not the same in different editions. It is understood that the Ordnance Survey Department will supply impressions of the current edition of the map, on the 25-inch scale, with the parcels, numbers, and cancelled detail of any previous edition added by hand in a distinctive colour and certified as correct, on payment of the cost thereof. The ordnance maps can be inspected at the Ministry of Agriculture and Fisheries, 10, Whitehall Place, S.W.1.

(*a*) The reference in the text to rights and outgoings subject to which the property is sold is inserted in this place with the object of protecting the vendor from liability in case it should appear after the date of the contract that some such right of which he was then unaware in fact existed: *Russell* v. *Harford*, L. R. 2 Eq. 507; *Nottingham Brick, &c., Co.* v. *Butler*, 15 Q. B. D. at p. 271.

As regards rents which are incidents of tenure, outgoings such as land tax and tithe rent charge to which the property is presumed to be subject unless otherwise stated (Williams, V. & P., 3rd ed. 164), patent easements (*Ashburner* v. *Sewell*, [1891] 3 Ch. at p. 409), and such physical defects in the property as, having regard to the description of the property as a whole and the purposes for which it is sold, are immaterial to the description (see *Shepherd* v. *Croft*, [1911] 1 Ch. 521, and cf. *Re Puckett & Smith*, [1902] 2 Ch. 258), the condition is merely declaratory of the law as embodied in

shl be discovered in the parlars [or plan] [or these condons] the same shl not annul the sale.

Provision excluding compensation (*b*).

A. Nor shl any compenson be allowed by the vendors in respt throf.

Provision for compensation (*c*).

B. But a reasble compenson in respt throf [except it be a matter of quantity wch shl not be the subjt of compenson on either side] shl be allowed or pd by the vendors or pchaser as the case may be, regard being had to the amt of the pchase moy provd that such compenson shl be demanded in writing prior to [the time hby fixed for] complon [for wch ppose time shl be deemed to be of the essence of the contract] (*d*)

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the maxim *caveat emptor*. As to what is a patent defect, see *Yandle* v. *Sutton*, [1922] 2 Ch. 199; *Simpson* v. *Gilley*, 92 L. J. (Ch.) 194.

Any right not mentioned in the particulars, but the mention of which is necessary to a true description of the property sold, must be made the subject of special condition as in clause 5, *ante*, p. 249.

(*b*) See Williams, V. & P., 3rd ed. 66 and 86. This is now the more common provision, especially in sales by trustees. As to the position of the vendor where there is found to be a misdescription, and the conditions provide that no compensation shall be given, see *Re Terry & White*, 32 Ch. D. at p. 24; *Re Puckett & Smith*, [1902] 2 Ch. 258. A condition excluding compensation does not prevent the purchaser from recovering damages against the vendor on his covenants for title contained in the conveyance: *Eastwood* v. *Ashton*, [1915] A. C. 900.

(*c*) See Dart, 7th ed. 146 *et seq.*; Williams, V. & P., 3rd ed. 680. This is not a depreciatory condition: *Hobson* v. *Bell*, 2 Beav. 17; and may be used in a proper case by trustees: Dart, 7th ed. 154; *Dunn* v. *Flood*, 28 Ch. D. at p. 591. But specific performance may be refused to a purchaser where he is claiming compensation under the condition for an error due to trustees' negligence. And compensation allowed by a mortgagee when the error is due to his negligence may entitle the mortgagor to damages: *Tomlin* v. *Luce*, 43 Ch. D. 191.

(*d*) Where this condition is inserted, and the words directing the demand to be made before completion are omitted the purchaser can obtain compensation after completion: Dart, 7th ed. 812; *Palmer* v. *Johnson*, 13 Q. B. D. 351; and see *Clayton* v. *Leech*, 41 Ch. D. 103. In the case of mutual mistake, rectification of an agreement may be granted after completion, and specific performance may be directed of the agreement as rectified: *Craddock Bros.* v. *Hunt*, [1923] 2 Ch. 136; *United States* v. *Motor Trucks, Ltd.*, [1924] A. C. 196. As to the effect of the conveyance on a previous collateral warranty as to the state of the property, see *De Lassalle* v. *Guildford*, [1901] 2 K. B. 215; and cf. *Creswolde-Williams* v. *Barneby*, 49 W. R. 203; *Joliffe* v. *Baker*, 11 Q. B. D. 255; and as to a collateral contract, see *Saunders* v. *Cockrill*, 87 L. T. 30. As to what constitutes a warranty, see *Heilbut, Symons & Co.* v. *Buckleton*, [1913] A. C. 30.

the amt of compenson (*a*) to be fixed by the auctioneer *or* "by two referees one to be appted by each party, or their umpire, psuant to the Arbitration Act, 1889," whose decision shl be final.

C. But a reasble compenson (if demanded in writing before complon) shl be allowed or pd by the vendors or pchaser as the case may be, to be settled by two referees or their umpire, in the usual way. Provision for compensation. Short form.

23. If the [any] pchaser fail to comply with any of these condons, his deposit shl, unless the Ct orwise directs (*c*), be absolutely forfeited, & the vendors shl be at liberty (witht being obliged to tender a convce) to resell the ppty [lot or lots sold to him], either by public auction or private contract; & the deficiency (if any) arisg on such resale (*d*), & all expses attendg the same or any attempted resale, shl be made good & pd by the pchaser at the psnt sale as liquidated damages; & any increase of price on such resale shl belong to the vendors. Non-compliance with conditions (*b*).

(*a*) As to the measure of compensation, see *Re Chifferiel*, 40 Ch. D. 45: Webster Conditions of Sale, 3rd ed. 107–125.

(*b*) See *Essex* v. *Daniell*, L. R. 10 C. P. 538; *Soper* v. *Arnold*, 14 App. Cas. 429; *Sprague* v. *Booth*, [1909] A. C. 576; *Jones* v. *Burnell*, [1911] W. N. 153. As to default in payment of instalments of purchase-money, see *Cornwall* v. *Henson*, [1900] 2 Ch. 298; *Kilmer* v. *British Columbia, &c., Ltd.*, [1913] A. C. 319. As to the power of the vendor to resell in the absence of this condition, see Williams, V. & P., 3rd ed. 48–50, 1019. The destination of the deposit is now in the discretion of the Court whether it be made the subject of express stipulations or not: L. P. Act, 1925, s. 49 (2). As to the former right of the vendor to retain the deposit in the absence of express stipulation where he obtained rescission owing to the purchaser's failure to complete, see *Howe* v. *Smith*, 27 Ch. D. 89; *Hall* v. *Burnell*, [1911] 2 Ch. 551; *Harrison* v. *Holland*, [1921] 3 K. B. 297; Williams, V. & P., 3rd ed. 27, 1015.

The purchaser is entitled to recover his deposit if he has notice of an available act of bankruptcy committed by the vendor before completion: *Powell* v. *Marshall*, [1899] 1 Q. B. 710. Bankruptcy of vendor effect on deposit.

(*c*) See L. P. Act, 1925, s. 49 (2), and note, pp. 234, 235.

(*d*) In calculating the deficiency, credit must be given by the vendor for the amount of the deposit, if any, which is retained by him: *Shuttleworth* v. *Clews*, [1910] 1 Ch. 176, and see *Griffiths* v. *Vesey*, [1906] 1 Ch. 796. In an action for damages for breach of contract, the vendor has been allowed to recover the deposit payable but not actually paid under the contract, although the amount of the deposit was in excess of the damage actually sustained: *Dewar* v. *Mintoft*, [1912] 2 K. B. 373. The measure of damages is the difference between the contract price and the value of the land at the time of the breach: *Keck* v. *Faber*, 60 Sol. J. 253, 287, and cf. *Jamal* v. *Moolla Dawood Sons & Co.*, [1916] 1 A. C. 175.

Memorandum (*d*).

Memorandum to be appended to conditions.

It is hby agrd betn Messrs. ——, as agents for A. & B. the vendors, & —— of ——, that at the sale by auction this —— day of —— (*e*) of the ppty described in these parlars the sd —— was the highest bidder for & has become the pchaser of the ppty [lot ——] described in these parlars for the sum of £——, & that he has pd to the sd Messrs. —— the sum of £—— as a deposit & in pt paymt of the pchase-moy & that these parlars & condons shl be taken as the terms of agrmt for the sd sale & pchase: As witness our hands this —— day of ——, 19—.

Requirements of the Statute of Frauds.

(*d*) The names of the vendors, or such a description as will sufficiently identify them, must appear on the contract, to satisfy s. 40 of the L. P. Act, 1925, which in part replaces s. 4 of the Statute of Frauds: see *Potter* v. *Duffield*, L. R. 18 Eq. 4; *Dewar* v. *Mintoft*, [1912] 2 K. B. 373; *Lovesy* v. *Palmer*, [1916] 2 Ch. 233; *Kœnigsblatt* v. *Sweet*, [1923] 2 Ch. 314. As to the effect of an offer to the auctioneers made subsequently to the auction where the name of the vendor does not appear on the memorandum: see *Filby* v. *Hounsell*, [1896] 2 Ch. 737, discussed in *Lovesy* v. *Palmer*, *sup.*

The auctioneer has implied authority to sign the agreement as agent of the purchaser: *Sims* v. *Landray*, [1894] 2 Ch. 318; but the authority does not extend to his clerk: *Bell* v. *Balls*, [1897] 1 Ch. 663; unless the purchaser assents to the clerk signing: *Sims* v. *Landray*, [1894] 2 Ch. 318; see Williams, V. & P., 3rd ed., 21.

An authority to an estate agent to sell at a definite price authorises him to sign an open contract: *Rosenbaum* v. *Belson*, [1900] 2 Ch. 267; *Keen* v. *Mear*, [1920] 2 Ch. 574; but a mere general authority to sell confers no authority to make a contract: *Lewcock* v. *Bromley*, 65 Sol. J. 75.

As to what is a sufficient reference to a plan, see *Nene Valley Drainage Commissioners* v. *Dunkley*, 4 Ch. D. 1.

The admissibility of evidence to show what is intended to be sold is discussed in *Plant* v. *Bourne*, [1897] 2 Ch. 281.

Title other than contracted for.

As to the registration of a contract for sale as an "estate contract," see L. C. Act, 1925, ss. 10 (1), Class C. (iv) and 13, and as to the liability of an "estate contract" to be overreached by a conveyance to a purchaser of a legal estate in the land, whether with or without notice of it, see L. P. Act, 1925, s. 2.

Stamp.

As to stamps on contracts for sale see Stamp Act, 1891, s. 59; *post*, pp. 390, 421.

Variation for sale by private contract.

This memorandum may be adapted to a sale by private contract by omitting the references to the auction, and adding at the end, "so far as the same are applicable to a sale by private contract."

(*e*) Where the reference was to a wrong date, the auctioneer's signature to the contract was held not to be binding upon the purchaser: *Van Praagh* v. *Everidge*, [1903] 1 Ch. 434.

Pchase-moy £——.
Deposit pd, £——.
Balance, £——.
Abstract to be sent to ——.

II.

GENERAL CONDITIONS *on* SALE *by* AUCTION *of* LEASEHOLDS. VARIATIONS *for a* SALE *in* LOTS, *and adapted to different circumstances* (*a*).

1. *As to biddgs, &c.*, p. 245.
2. *Valuation of fixtures, &c. See* f. **3**, p. 297.
3. *Deposit & complon*, p. 246.
4. *Possession & intt*, p. 247.
[*Provision as to insurance, &c., see* p. 333.]

Statement of incumbrances and offer of inspection of documents (*b*).

5. THE ppty [each lot] is subjt to the underlease or tenancy *or* "the sevl underleases & tenancies" mentd in the parlars as affecting the same, & to the rents, covts & condons of the lease *or* "underlease" under wch the same is held as stated in the parlars. The counterpart[s] or copy [copies] of the underlease[s] or written agrmt[s (if any) with the tenants] & the lease *or* "underlease" under wch the ppty [each lot] is held will be produced at the sale & may be inspected at the office of the vendors' solors at any time within *one week* previously & the pchaser [respective pchasers] (whether takg advantage of such opportunity of inspection or not) shl be deemed to have full notice of the contents of all such documts & of the nature & extent of the covts & condons & rights affect-

(*a*) See the notes to Precedent I. and note, p. 234, and see also SPECIAL CONDITIONS, IV., pp. 322 *et seq.*

(*b*) See *Reeve* v. *Berridge*, 20 Q. B. D. 523; *Re Davis & Cavey*, 40 Ch. D. 601; *Cox* v. *Coventon*, 31 Beav. 378; *Midgley* v. *Smith*, [1893] W. N. 120; *Re White & Smith*, [1896] 1 Ch. 637; *Re Haedicke & Lipski*, [1901] 2 Ch. 666; *Molyneux* v. *Hawtrey*, [1903] 2 K. B. 487. Care should be taken not to misdescribe an underlease as a lease; see *Re Beyfus & Masters*, 39 Ch. D. 110: *Broom* v. *Phillips*, 74 L. T. 459.

For a special condition applicable to the sale of property held by way of underlease where part only of the property in the lease or superior lease is sold, see *post*, p. 323, f. 4.

ing the ppty sold (*c*) (whether resply of a usual character or not) & of the terms of the sub-tenancies notwithstdg any partial, incomplete, or inaccurate statemt of such contents, or of the effect throf or of the terms of the sub-tenancies in the parlars or these condons [& shl also be deemed to have notice of the state of the ppty as to repairs, insce, party-walls, & all other matters (*d*)]. In any case in wch the vendors have no counterpt of the [under] lease or agrmt of tenancy, or there is no written agrmt, the pchaser shl be satisfied with such evidence of the terms of the tenancy as the vendors may be able to adduce.

Title (*e*). **6.** The title to the ppty [each lot] shl commence with the lease [*or* "underlease"] under wch the same is held as stated in the parlars & the pchaser shl not call for the production of or make any objection or requon resptg the lessors or the previous title although the same may be recited or referred to, or he may orwise have notice throf but shl assume that such [under] lease was well granted [& that any lease, *or* "underlease," purportg to be grted in exercise of a power was in conformity with such power].

[**7.** *As to recitals being evidence*, p. 252.]

8. *Identity*, p. 253.

Evidence of performance of covenants (*a*). **9.** The rect for the last rent accrued due previously to the date fixed for the complon of the pchase in respt of the ppty [each lot] shl be accepted as conclusive evidce of the pformce & observce of all the covts & condons in the lease [*or* "underlease"] under wch the same is held [*in the case of an underlease*, "& of the paymt of all rent accrued due under, & the pformce & observce of all the covts & condons contd in the superior lease"], or of the effectual waiver of any breach (whether continuing or not) of any covt or condon up to the

(*c*) As to affirmative conditions running with the land on an assignment of leaseholds, see *post, sub tit.* "Leases."

(*d*) As to the words in this bracket, see *Re Terry & White*, 32 Ch. D. at pp. 23, 24, and see also Williams, V. & P. 3rd ed. 576.

(*e*) As to the omission of this and the next condition under the L. P. Act, 1925, ss. 44 (2) and 45 (3) and (6), see *ante*, pp. 235, 236.

(*a*) This condition makes the receipt conclusive evidence: *Lawrie* v. *Lees*, 7 App. Cas. 19, while the L. P. Act, 1925, s. 45 (2, 3), replacing the C. Act, 1881, s. 3 (4, 5), makes it *primâ facie* evidence only: *Re Highett & Bird*, [1903] 1 Ch. 287; *Re Taunton, &c., Building Socy.*, [1912] 2 Ch. 381; and see *ante*, p. 238. For other forms, see Special Conditions, IV., *post*, p. 322.

actual complon of the pchase, witht proof being required of the title or authority of the pson giving such rect.

10. *Apportionment of incoming rents*, p. 252, *and note thereto.*

[11. *Expenses*, p. 253.**]**

[12. *Registron & stampg*, pp. 253.**]**

[13. *Licence to assign*, pp. 325, 326.**]**

14. *Conveyance*, p. 254 (*b*).

15. *Covenants*, p. 255.

16. The pchaser [of each lot] shl expressly or impliedly covt to pay pform & observe & to indemnify the vendors [& the este of their testor] agst the rents & covts of the lease [under wch the same is held] (*d*), & shl for that ppose, if

Indemnity to vendors against rent, &c. (*c*).

(*b*) Where a liability attaches to the holder of the legal estate and the land is not registered but is in a compulsory area, add "And the pchaser shl be regrd under the L. R. Act, 1925, as proptor of the land comprised in the sd lease, & shl within —— days after complon produce to the vendors' solrs the Land Certe to show that he has been duly regrd as such proptor."

Registration of purchaser.

Where the property is held under one lease and is sold in lots the conditions should provide for the sale being effected by assignment to one and the grant of subleases to the other purchasers: see *post*, p. 326.

(*c*) The indemnity may be required although the vendor is only an assignee of the lease, as he or his testator may have entered into a similar covenant and as it has been held that he remains liable to the lessor under the Apportionment Act, 1870, for an apportioned part of the current rent which becomes due after completion: *Swansea Bank* v. *Thomas*, 4 Ex. D. 94; *Glass* v. *Patterson*, [1902] 2 Ir. R. 660. The statutory implied covenant will usually be allowed to operate.

As to indemnity against rent, &c.

(*d*) *I.e.* against future payments of rent and breaches of covenants, see *Re Taunton, &c., Socy.*, [1912] 2 Ch. 381. Where the rent is a rack rent it may be proper to add " & shl either expressly or, if the statutory covt for indemnity is implied in the assignment of the ppty to him [his lot], then by appropriately extending such covenant, charge the ppty [lot pchased by him] with the paymt to the vendors and their successors in title of all moys costs & expses pd or incurred by them owing to the non-paymt or non-pformce or non-observce at any time or times after complon of the rent & covts by the lessee & condons contd in the lease under wch the same is held with intt thron in the meantime at the rate of £5 p.c. p.a. until paymt," otherwise, if the purchaser lets the property fall out of repair, the vendors may have to perform the covenants of the lease, and, if the purchaser becomes bankrupt, may have no remedy.

required, execute & deliver to the vendors a duplicate of the assnmt to be prepared & stamped by & at the expse of the pchaser (*e*).

17. *Custody of title deeds, &c., if required, see* SPECIAL CONDONS, XIII., pp. 370 *et seq.*

Apportionment of outgoing rents (*f*).

[**18**. WHERE more than one lot or pts of more than one lot are held under the same lease, the rent shl be apportioned betn such lots in the shares mentd in the parlars, & each pchaser shl take his convce subjt to such apportioned rent, & shl not require the consent of the reversioner to such apportionmt or require such rent to be legally apportioned.]

19. *Time for deliverg requons, &c.*, p. 257.

20. *Rescission clause*, p. 258.

21. *Misdescription not to annul sale*, p. 259, *saying* "and is sold subjt to all rents & outgoings, rights of way & other rights & easemts (if any) affecting the same," *and provision A, B, or C*, pp. 262, 263, *as to compensation.*

22. *Non-compliance with condons*, p. 263.

MEMORANDUM, p. 264.

III.

GENERAL CONDITIONS *on* SALE *by* AUCTION *of a* FREEHOLD SHOP. VARIATIONS *for* SEVERAL SHOPS *sold in* LOTS, *and for* LEASEHOLDS. *Concise form* (*g*).

1. *Biddgs, see Precedent I.*, p. 245.

Valuation of fixtures.

2. THE shop & tenants' fixtures & fittgs [on each lot] shl be pd for by the pchaser in addon to the amt of his biddg at the price named in the parlars, & the amt of such price [*or*, "psuant to a valuon to be made at the joint expse of the vendor & the pchaser by Mr. ——, or failg such valuon at their fair value, & the amt of such valuon"] shl for all the pposes of these condons (except as to paymt of the deposit) be deemed pt of the

(*e*) It is believed to be now usual to throw the expense of a duplicate of the conveyance (which is inconsiderable) on the purchaser.

(*f*) See note (*b*), p. 267, *supra*; and *post*, p. 326.

(*g*) See notes to Precedents I. and II. For a full form with variations adapted to various circumstances, see Precedent I. as to freeholds, and Precedent II. as to leaseholds.

pchase-moy & the decision of Mr. —— as to what are shop & tenants' fixtures & fittgs shl be conclusive.

3. *Deposit and completion, see Precedent I.*, p. 245.

4. The [Each] pchaser shl on the complon of the pchase be let into posson or rect of the rents as from the sd —— day of —— next, up to wch day all outgoings (*a*) will be discharged & rents will be received by the vendors; the rents & outgoings being, if necy, apportioned for this ppose. If from any cause whatever other than the wilful default of the vendors the pchase [of any lot] shl not be completed on or bfe the day fixed for complon, the pchaser shl pay to the vendors intt on the balance of the pchase-moy [& the amt of the afsd valuon *or* "the price of the fixtures"] at the rate of £—— p.c. p.a. from that day until the complon of the pchase, & shl not be entitled to any compenson for the vendors' delay or orwise, but this stipulon is witht prejudice to the vendors' rights under any other of these condons. Possession and interest (*a*).

[*Provision as to insurance, &c., see* p. 333.]

5. *Statement of incumbrances & offer of inspection of documents if & so far as necessary*, p. 249; *for leaseholds*, p. 265.

6. *Condons as to commencemt & evidence of title, abstract, &c.*, p. 299 *et seq.*; *for leaseholds*, p. 266.

7. *Identity*, p. 253, f. **9B**, *saying if necessary* "nor to distinguish the pts held under different titles."

8. *Conveyance, &c.*, p. 254.

9. [*Purchaser to be registered*, p. 255, f. **14**, *and see note* (*b*), *ib.*; *if leaseholds registered* (*or unregistered but in compulsory area*), p. 267, *note* (*b*).]

10. *Covenants*, p. 255.

[*Indemnity of vendors in respect of continuing liability under affirmative covenants*, p. 255.]

11. *Custody of title deeds, &c., see* Special Conditions XIII., p. 370.

12. Any objections or requons arisg on the abstract, parlars or condons shl be sent in within —— days after the delivery of the abstract orwise the same shl be considered as waived (in wch respt time shl be of the essence of the contract), & if the [any] pchaser shl insist on any objection or requon wch, Requisitions and rescission.

(*a*) See the notes, *ante*, pp. 247 *et seq.*

not being necy for the enforcemt of any right under either of ss. 42 or 125 of the L. P. Act, 1923, the vendors shl be unable or unwillg to satisfy, the vendors may by notice in writg to the pchaser or his solor annul the sale on returng or tenderg the deposit witht intt, costs, or other paymt.

For leaseholds add Evidence of performance of covenants & indemnity to vendors against rent, &c., as in Prec. II., p. 267,

13. *Misdescription not to annul sale,* p. 259 ; *with variation for leaseholds at p.* 268, *and provision A,* p. 262, *excluding compensation.*

14. *Condon as to non-compliance,* p. 263.

MEMORANDUM, p. 264.

IV.

GENERAL CONDITIONS *on* SALE *by* AUCTION *of a* BUILDING ESTATE *laid out in* LOTS *in accordance with a* BUILDING SCHEME (*b*).

1. *Biddgs, see* p. 245.

2. *Deposit & complon, see* p. 246.

Building scheme how created.

(*b*) A building scheme is not created by the mere fact that the owner of an estate sells it in lots and takes varying covenants from various purchasers : *Reid* v. *Bickerstaff*, [1909] 2 Ch. at p. 319. To establish a building scheme two conditions must be satisfied : (1) there must be a defined area within which the scheme is operative ; (2) the obligations to be imposed within that area must be defined : *Reid* v. *Bickerstaff*, [1909] 2 Ch. at pp. 319, 323. Those obligations need not, however, be identical, and a power expressly reserved to the vendor by the conditions to abstract certain property from the scheme or to vary or dispense altogether with the restrictions in regard to unsold lots, or indeed in regard to any lot, is not in itself sufficient to negative the existence of a scheme clearly affecting the whole of the property : *Elliston* v. *Reacher*, [1908] 2 Ch. 374, 665 ; *Mayner* v. *Payne*, [1914] 2 Ch. 555 ; see *Whitehouse* v. *Hugh*, [1906] 2 Ch. 283 ; *Sobey* v. *Sainsbury*, [1913] 2 Ch. 513 ; and cf. *Osborne* v. *Bradley*, [1903] 2 Ch. 446. The existence of a scheme may be established whether all the lots are put up for sale by auction at the same time, or separate sales are effected by private treaty at various intervals : *Spicer* v. *Martin*, 14 App. Cas. 12 ; *Elliston* v. *Reacher, sup.* ; and see *Tucker* v. *Vowles*, [1893] 1 Ch. 195. Restrictive covenants may now be registered as a landcharge, see *post*, p. 355.

For a conveyance made in pursuance of conditions such as the above, see *post, sub tit.* "CONVEYANCES" ; and for similar conditions for registered land, see *post*, p. 278. For forms of condition imposing restrictive stipulations where no building scheme is established, see *post*, pp. 343 *et seq.* As

3. *Possession & intt, see* p. 247.

[*Provision as to insurances, &c., see* p. 333.]

4. The ppty wch is known as *or* "forms pt of the —— Este" has been laid out for bldg in accordance with a general scheme applicable to the whole of the ppty *or* "the sd —— Este" shown as lotted (*a*) in the sale plan annexed to the parlars [including the lots marked "reserved" on the sd plan] & is offered for sale as a bldg este in the lots numbered for sale on the sd plan [subjt to the rights mentd in the parlars (*b*) &] subjt [also] to & with the benefit of the stipulons contd in the schdle hto. Application of building scheme.

5. The pchaser of each lot shl be bound to observe & pform for the benefit & protection of each of the other lots [including the lots marked reserved] such of the stipulons contd in the schdle hto as are applicable to the lot pchased And the convce of each lot shl contain separate covts by the pchaser with the vendors & every other pchaser whose lot shl have been previously conveyed (*d*) to observe & pform the sd stipulons, such covts to be so framed as to bind as far as may be the lot pchased into whosesr hands the same may come [but not so as to impose any psonal liability on the covenantor for any Frame of covenants (*c*).

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to the extinguishment of covenants entered into in pursuance of a building scheme, see *post, sub tit.* "CONVEYANCES," note (*d*). Under s. 84 of the L. P. Act, 1925, application may be made to an official arbitrator (sub-s. 10) to discharge or modify restuitive covenants when obsolete or injurious or of no benefit to the persons who can enforce them (and for other reasons).

(*a*) See *Rowell* v. *Satchell*, [1903] 2 Ch. 212.

(*b*) It is assumed in these conditions that there are no rights in the nature of incumbrances affecting the property other than such as are capable of being fully described in the particulars.

(*c*) Provision is sometimes made for the execution of a mutual deed of covenant: see *post, sub tit.* "CONVEYANCES": but this is not necessary to the validity of the scheme (*Spicer* v. *Martin*, 14 App. Cas. at p. 25), which may be effectively carried out by conveyances with the proper covenants as above described.

(*d*) Under this covenant it will be immaterial in what order the conveyances to the various purchasers are executed. The restrictive stipulations will enure to the benefit of all. As regards the affirmative stipulations, purchasers who have already taken up their conveyances will have the benefit of those "respecting" the lots purchased by them respectively; and subsequent purchasers will be in practically the same position, since they will have the benefit of those of which the benefit is capable of running with the land: see *post, sub tit.* "COVENANTS, FORMAL PARTS," note, and p. 355, note.

breach of the sd stipulons after he shl have parted with all intt in the lot in respt of wch such breach shl occur]. Provd that no pchaser shl be entitled to be made a party to the convce to any other pchaser or to make any objon, requon or enquiry in relation thereto.

Vendors to observe negative covenants until sale (*e*).

[**6.** Until the sale of any lot the vendors shl observe such of the negative stipulons as ought to be observed by the pchaser of that lot & do not involve the expenditure of moy.]

Reservation to vendors of right to dispense with stipulations as to unsold lots and the lots marked reserved (*f*).

7. The vendors reserve to themselves & to all psons deriving title under them to the sd —— Este or any pt throf orwise than by convce in wch the right reserved by this condon shl not be expressly assned, the right to sell, transfer or orwise deal with any pt of the ppty wch may not be sold or the sale of wch may not be completed at the psnt sale [& also all or any of the lots marked "Reserved" wch though not included in the psnt sale are subjt to the sd bldg scheme] free from the stipulons contd in the schdle hto, in such lots & subjt to such restrictions & stipulons (if any) as they may think fit.

8. *Commencemt, & evidence of title, abstract, &c., see* pp. 299 *et seq.* (*g*).

9–12. *Recitals evidence, Identity, Registron and Stamping of documents,* pp. 253 *et seq.*

Conveyance by printed form (*h*).

13. On paymt of the balance of the pchase-moy each pchaser shl be entitled to a convce of the lot or lots pchased by him. Such convce shl at his expse be prepared by filling

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(*e*) This condition probably states no more than would be implied without express provision: *Re Birmingham, &c., Land Co. & Allday,* [1893] 1 Ch. 342; and should not be inserted where the following more usual condition giving power to the vendors to dispense with stipulations as to the unsold lots is inserted.

(*f*) See *ante,* p. 270, note; *Sidney* v *Clarkson,* 35 Beav. 118.

Title.

(*g*) It will generally be convenient not to offer a very short title, as so doing may deter trustees from bidding. As the abstract will probably be printed, very small additional expense will be incurred by giving an abstract showing a 30 years' title.

Form of conveyance.

(*h*) It is usually convenient to provide that the purchase deeds are to be in a specified form, and where the lots are numerous, to provide that they should be prepared on printed forms to be furnished by the vendor. It will be observed that the risk of error in perusing a large number of conveyances is very great, and that in the case of a building estate where one purchaser is entitled to require another to observe the stipulations, the vendor may, by the accidental omission of a word in the conveyance to one purchaser, fall under a very serious liability to the other purchasers.

up the blanks, & making such alterons as the deaths of pties & other matters (if any), happeng before complon, may render necy, in a printed form which will be furnished to him by the vendors as soon as he accepts the title (*i*); but the vendors may allow such convce to be made in a different form. The pchaser shl on complon execute & deliver to the vendors a duplicate counterpt convce to be prepared at the expse of the vendors.

Instalments (*a*).

14. If any pchaser shl within 7 days from the day of sale give notice in writing to the vendors' solors of his desire to pay his pchase moy by instalmts, & shl on the day appted for complon pay to the vendors or, as they shl direct, at the office afsd of the vendors' solor such a sum as shl togr with his deposit amount to *one-tenth* of his pchase-moy (& in this respect time shl be of the essence of the contract), the pchase shl be completed at such time & place, & the vendors will accept payment of the unpd pt of the pchase-moy with intt thon in the meantime at the rate of £4½ p.c. p.a. reducible to £4 p.c. p.a. on punctual paymts in mner followg (that is to say), the unpaid pchase-moy by nine half-yearly instalmts, the first of such instalmts to be pd at the expiron of six calendar months from the day of sale, & each subseqt instalmt to be pd at the expiron of six calendar months after the day appted for the paymt of the last preceding instalmt, togr with the intt on the pchase-moy for the time being unpaid on the day hrinbfe appted for the paymt of & togr with each instalmt, & the punctual paymt of the unpaid pchase-moy & intt in mner afsd shl be secd by a charge by way of legal mtge of the lot or lots pchased by that pchaser, which shl, at the expse of the pchaser, be prepared by filling up the blanks & making such alterons as the deaths of pties & other matters (if any) happeng before complon may render necy in a printed form wch will be furnished to him by the vendor on his giving such notice as afsd.

Offer of production of

15. Copies of the printed forms of convce & charge above referred to will be produced at the sale, & may be inspected by

(*i*) For other forms, see *post*, pp. 336 *et seq.*

(*a*) Owing to the risk of some event happening before all the instalments are paid which may necessitate a change in the language of the printed form, the scheme here suggested is more convenient in the present case than the scheme suggested at p. 334, where the conveyance is not to be made till the instalments are paid.

printed forms of conveyance and charge.

intendg pchasers at the office of the vendors' solor within one week bfe the day of sale. Every pchaser, whether taking advantage of such opportunity of inspection or not, shl be deemed to have full notice of the contents of, & to have approved of, such printed forms, although the same may be of an unusual nature.

Free conveyance (*b*).

16. If any pchaser shl within fourteen days after the delivery of the abstract to him give notice to the vendors' solor that he accepts the title witht makg any objection or requon, he shl have his convce, & if he elects to pay by instalmts, the abovementd mtge, free from cost except *ad valorem* stamp duty.

Conditions to be registered (*c*).

17. These condons shl be registered in the name of the vendors in the register of land charges (*or, if in Yorkshire,* in the local registry) as a land charge before the convce of any lot has been executed.

18. *Custody of title deeds, &c., see* pp. 370 *et seq.*

19. *Requisitions, see* p. 257.

20. *Rescission, see* p. 258.

[21 & **22.** *For unregistered land in a compulsory district add, Pchaser to be registered,* p. 255, *and application to register to contain restrictive conditions,* p. 360.**]**

23. *Misdescription not to annul sale,* p. 259, *adding provision A excluding compensation and qualifying the condition, if the sale plan is prepared from the ordnance survey map or is otherwise known to be inaccurate in the manner suggested in note,* p. 261.

24. *Non-compliance with condons, see* p. 263.

Schdle of Stipulons (*d*).

1. No house or bldg shl be erected on any lot except in accordance with **[**such of**]** these stipulons **[**as affect that lot**]**.

(*b*) For other forms, see Special Conditions, *post,* p. 338.

(*c*) Restrictive covenants made after 1925 should be registered in the register of land charges, see L. C. Act, 1925, s. 10 (1), Class (D) ; or if the land is in Yorkshire, in the appropriate local deeds registry (sub-s. 6), but this alternative is not given in the case of land in Middlesex (s. 18). Non-registration avoids a land charge of Class (D) as against a purchaser of a legal estate for money or money's worth (s. 13) ; and s. 199 of the L. P. Act, 1925, provides that a purchaser shall not be affected by notice of any instrument capable of registration under the L. C. Act, 1925, which is void as against him under that Act by reason of non-registration.

(*d*) See *post,* pp. 361 *et seq.*

2. Each pchaser shl when required in writing by the vendors erect & for ever maintain, *continue condon as to walls & fences*, p. 361.

3. *Condons as to the number & cost price of houses on each plot*, pp. 363 *et seq.*

4. *To keep building line*, p. 363.

5. *Plan to be approved by the vendors*, p. 364.

6. *Windows*, p. 365, *see also* p. 353.

7. *User of premes*, pp. 366 *et seq.*

8. *Roads*, p. 368 (*a*).

[9. *Sewers*, p. 369 (*a*).]

10. If any pchaser shl refuse or neglect specifically to pform any stipulon involvg the expenditure of moy either bfe or after he shl have ceased to have any intt in the lot pchased by him, it shl be lawful for but not incumbent on the vendors specifically to pform the same, & for that ppose if necy to enter on that lot at any time within twenty-one yrs from the day of sale, & the costs & expses so incurred by the vendors (to be assessed or determined by the vendors' surveyor for the time being) shl, togr with interim intt thron at the rate of £5 p.c. p.a., if the same shl be incurred by the vendors within twenty-one yrs from the day of sale, be charged on the lots or lot in respt of wch such refusal or neglect shl have taken place. Penalty for breach of stipulations (*b*).

[11. The vendors shl not be bound to enforce the pformce of these stipulons by any pchaser unless the pchaser requirg the same to be pformed shl give such secy to the vendors for their costs as they shl reasbly require.] Vendors not bound to enforce.

12. In these stipulons the word "vendors" means the vendors or other the pson or psons for the time being entitled to dis- Definition of "vendors" (*c*).

(*a*) Where the lots are of small value it is generally convenient for the vendor to agree to make the roads and sewers, and for the purchasers to agree to maintain them. The particulars should state what rights the purchasers are to have over the roads and sewers.

(*b*) If, as is sometimes provided (see condition 5, *ante*, p. 271), the original purchaser is not liable for a breach of covenant after he has parted with the land, the provision for personal repayment cannot be enforced after this event has happened, but the charge may be enforced. It is necessary to restrict it as to perpetuities. Another plan is to give the vendor a power of re-entry and perception of profits, *see post*, pp. 522, 523; but the form in the text is perhaps preferable in the case of small lots.

(*c*) See *Mayner* v. *Payne*, [1914] 2 Ch. 555.

pense with these stipulons as regards the lots marked "Reserved" [& the lots unsold at the psnt sale] or any of such lots.

MEMORANDUM, p. 264.

V.

CONDITIONS *of* SALE *of a* FREEHOLD HOUSE *registered with a* POSSESSORY TITLE. VARIATIONS *for a* LEASEHOLD HOUSE *with a* POSSESSORY TITLE (*d*).

1. *Biddgs*, p. 245.

2. *Deposit & complon*, p. 246.

3. *Possession & intt*, p. 247.

4. *Provision as to insurance, &c.*, see p. 333.

5. *Statement of incumbrances & offer of inspection of documents, if & so far as necessary*, p. 249, *for leaseholds*, p. 266.

6. *Conditions as to commencemt & evidence of title, &c.*, p. 317, f. **3**; *for leaseholds*, p. 317, f. **6**.

7. *Authority to inspect register & copies of entries therein, &c., required to be furnished*, p. 318.

Identity. **8.** The ppty having been identified for the ppose of registon [and the boundaries noted as fixed in the ppty register (*e*)] no further proof of the identity throf with that described in any of the munimts of title shl be required beyond what is afforded by the munimts themselves.

9. *Conveyance by instrument of transfer*, p. 321, f. **20**.

10. *Priority notice*, p. 319, f. **15**, *or Provisional registration*, p. 320, f. **16**.

[*Custody of title deeds*, p. 370.]

11. *Requisitions & rescission*, p. 270.

[*For freeholds add if necessary indemnity of vendors in respect of continuing liability under affirmative covenants*, p. 256, *and*

(*d*) See the forms, *post*, p. 316.

(*e*) Where it is desired to indicate on the Filed Plan or General Map, or otherwise to define on the Register the precise position of the boundaries, proceedings must be taken under Rule 276; but unless in cases where it is noted in the Property Register that the boundaries have been fixed, the Filed Plan or General Map indicates the general boundary only: Rule 278.

for leaseholds add evidence of performance of covenants & indemnity to vendors against rent, &c., pp. 266, 267.]

13. The ppty wch is sold according to the plan filed in the Land Registry under the title No.—— [showing the fixed & ascertained boundaries (*a*)] is believed, &c., *continue condition as to misdescription*, p. 259, *with variations for leaseholds, at* p. 268, *and provision A*, p. 262, *excluding compensation.* Misdescription.

14. *Non-compliance with condons*, p. 263.

Memorandum, p. 264.

VI.

BUILDING SCHEME *for* Registered Land (*b*).

Land Registry.

Land Registration Act, 1925.

District —— .
Title No. —— .
Ppty —— .

Building Scheme (No. ——).

Date. The land comprised in the title above referred to, wch is known as the —— Este, has been laid out for bldg in accordance with a general scheme in lots as shown on the plan attached hto, wch is only intd to show the position of the lots & roads, & is not intd to be accurate as to dimensions, & subjt to a power to be reserved to the regrd

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(*a*) See note (*e*), *supra*.

(*b*) Notice of this scheme should be entered in the Charges Register as follows:—" The land in this title is subjt to a bldg scheme, No. —— , dated —— , & filed in the Registry." See *ante*, p. 270, note, as to how a building scheme is created. S. 50 of the L. R. Act, 1925, enables notice of restrictive covenants to be entered " and where practicable the notice shall be by reference to the instrument, if any, which contains the covenant . . . and a copy or abstract of such instrument shall be filed at the registry," *ib.* sub-s. (1). S. 40 enables a registered proprietor to create such restrictions afresh by covenant condition or otherwise, either in a registered disposition or in another instrument, and sub-s. (3) requires entries to be made in the Charges register of the obligations so imposed: see Rule 212.

proptor to abstract either wholly or partially from the scheme the lots marked "reserved" on the sd plan & any unsold lots, & is intended to be offered for sale as a bldg este, with the easemts specified in the first schdle hto, subjt to the exceptions & reservons specified in the second schdle hto, & subjt to the restrictive condons specified in the third schdle hto.

THE FIRST SCHEDULE.
[*Easements to be annexed to the lots.*]

THE SECOND SCHEDULE.
[*Exceptions and reservations to the registered proprietor.*]

THE THIRD SCHEDULE.
[*Restrictive Conditions & covenants involving expenditure.*]

VII.

GENERAL CONDITIONS *of* SALE *by* AUCTION *of* LAND *registered with an* ABSOLUTE TITLE *as a* BUILDING ESTATE *in small Lots.*

1. *Biddgs*, p. 245.
2. *Deposit & complon*, p. 246.
3. *Possession & intt*, p. 247.
[*Provision as to insurances, &c., see* p. 333.]

Application of building scheme (*c*).

4. The ppty wch forms pt of the —— Este has been laid out for bldg in accordance with a bldg scheme No. —— filed in the Land Registry under the District ——, Title No. ——, Ppty —— applicable to the whole of the ppty *or* "the sd —— Este" shown as lotted in the plan attached to the scheme so filed, a reduced copy of wch plan is the sale plan attached to the parlars [including the lots marked reserved on the sd plan] & is offered for sale as a bldg este in the lots numbered for sale on the sd plan [subjt to the rights mentd in the parlars] & subjt also to & with the benefit of the stipulons contd in the sd scheme wch is set out in full in the schdle hto.

5. *Frame of covenants*, p. 271.

(*c*) Compare the form, *ante*, p. 271, and see note (*b*) thereto.

6. *Reservation to vendors of right to dispense with stipulations as to unsold lots and the lots marked reserved,* p. 272.

7. *Commencemt of title, see* SPECIAL CONDITIONS, p. 316.

8. *Authority to inspect register & copies of entries therein, &c., required to be furnished,* p. 317.

9. *Identity,* p. 276.

10. *Conveyance by registered transfer,* p. 321 (*d*).

[11. *Part of purchase-money to remain on mtge,* p. 322, f. **23.]**

[12. *Free conveyance,* p. 321, f. **19** (*a*).**]**

[13. *Provisional registration,* p. 320, *or priority notice,* p. 319 (*aa*).**]**

14. *Custody of title deeds & covts to produce,* p. 370.

15. *Requisitions,* p. 257.

16. *Rescission,* p. 258.

17. The ppty wch is sold according to the plan filed in the Land Registry under the above title [showing the fixed & ascertained boundaries (*b*)] is believed, &c., *continue condition as to misdescription,* p. 259, *and provision A,* p. 262, *excluding compensation, and conclude,* "The sale plan is only intended to show the position of the lots & roads & is not to be taken as an accurate copy of the filed plan, or as being accurate as to dimensions" (*c*). Misdescription.

18. *Non-compliance with condons,* p. 263.

SCHEDULE.

MEMORANDUM, p. 264.

(*d*) For forms of transfer, see *post, sub tit.* "CONVEYANCES."

(*a*) These clauses can seldom be required where the vendor is registered with absolute title.

(*b*) See *ante,* p. 276, note (*e*).

(*c*) See *Gordon-Cumming* v. *Houldsworth,* [1910] A. C. 537.

VIII.

CONDITIONS OF SALE *of* CHOSES IN ACTION *of various natures* (*d*).

GENERAL CONDITIONS.

1. *Biddgs*, p. 245, *saying*, "The amt of advance for each biddg shl not be less than £—— for lots —— & —— & £—— for lots —— & ——."

2. *Deposit & completion*, p. 246, *omitting the name of the vendor's solor.*

3. EACH lot is sold subjt to the death duties (if any) wch may become payable in respt throf.

4. ON the complon of the pchase of any life intt in posson the pchaser shl be entitled thto as from the day fixed for complon, togr with current income accrued due but not then payable.

5. ON the complon of the pchase of any annuity in posson, the pchaser shl become entitled thto as from the last day for paymt throf preceding the day fixed for complon.

6. ON the complon of the pchase of any revy intt or poly the pchaser shl be entitled to the benefit or advantage throf as from the day of sale. All premiums on pols fallg due after the day of sale & bfe complon shl be pd by the vendor, & the amt so pd shl be repaid to him by the pchaser at complon togr with intt thron in the meantime at the rate of £4 p.c. p.a.

7. IF from any cause whatever other than the wilful default, *continue f.* **4** at p. 247.

8. *Conveyance*, p. 254, *saying* "assurance or transfer."

9. EACH lot is sold subjt to the special condons relatg thrto, & in case of discrepancy or inconsistency betn the special condons & the general condons, the special condons shl prevail.

10. *Requisitions*, p. 257.

11. *Rescission*, p. 258.

12 (*e*). No pchaser shl make any objection or requon on

(*d*) As to the sale of reversionary interests, see Withers on Reversions, pp. 153 *et seq.*, 55 Sol. J. 184, 201, 217.

(*e*) The L. P. Act, 1925, s. 44, applies to contracts for the sale of land only.

the ground of the absence of an express covt or a statutory acknowemt for the production & delivery of copies of documts of title if he will on complon have an equitable right to the production of such documts.

13. If any error or omission shl be found in the description of any lot, or as to the age of any pson, or in any other respt, the same shl not annul the sale but *continue provision C for compensation*, p. 263.

14. *Non-compliance with condons*, p. 263.

Lot 1.

The intt in posson during the joint lives of two ladies, born resply on the —— day of —— & the —— day of ——, in one-sixth share of one-half the income arising from the trust funds, the parlars of wch are stated in the schdle hto.

The Schedule.

Insert particulars of trust funds.

There are —— trustees.

Special Conditions.

1. The vendor's solor is ——, whose office is at ——.

2. The title shl commence, &c., pp. 299 *et seq.*

3. The pchaser shl accept a statemt dated, &c. [to be] made by the [solor of the] trees of the will [settlemt] conferrg the life intt offered for sale as conclusive evidence that the ppty representg the trust fund is correctly specified in the parlars. Evidence as to trust funds.

4. The pchaser shl accept a statutory declaron to be made by —— & certfes of birth as conclusive evidence of the ages of the ladies mentd in the parlars. Evidence of age.

Lot 2.

Revy life intt of a gentleman born on the —— day of ——, receivable on the death of a lady born on the —— day of —— in the income arising from the trust fund, parlars of wch are stated in the schdle hto.

Special Conditions.

Conditions as to Vendor's solor, commencemt of title, evidence as to trust funds & as to age, saying "lady & gentleman," *as in Lot* 1.

Succession duty (*x*).

5. [No] succession duty [at the rate of £—— p.c.] will be payable on the death of the lady mentd in the parlars.

Estate duty.

6. The pchaser shl assume that este duty will be payable on the death of the lady mentd in the parlars at the rate at wch it would be payable if she died immedly after complon, & there was no aggregation (*a*).

LOT 3.

Property described.

A CONTINGENT reversion, receivable on the death of the survor of a gentleman born on the —— day of —— (who has not been married) & of any woman he may marry if he leaves no child, in the one-fourth share of a trust fund represented by the trust fund, the parlars of wch are stated in the schdle hto.

Insurance.

The —— insce office is willing to entertain a proposal to cover the above mentd risk of marre & issue at a single premium of £——.

Statutory declaration.

Special Conditions, &c., as in Lot 1, *adding* "The pchaser shl accept the statutory declaron of —— that the gentleman mentd in the parlars has not been married."

LOT 4.

Description of property.

A poly of assurce for the sum of £——, effected in the —— Assurce Socy on the life of a gentleman born, &c., under the annual prem of £——, payable on the —— day of ——.

SPECIAL CONDITIONS.

1. *Vendor's solors,* p. 281.

2. *Commencement of title,* pp. 299 *et seq.*

Receipt for premium.

3. The production of the rect for the last paymt bfe complon of the premium on the sd poly shl be conclusive evidence that it is in full force.

Evidence of age.

4. The pchaser shl not require any evidence as to the age of the assured or as to the nature & truth of the statemts on wch such poly was grted.

Insurable interest.

5. The pchaser shl assume that the pson to whom the poly was grted had an insurable intt in the life assured.

MEMORANDUM, p. 264.

(*x*) See Fin. (1909-10) Act, 1910, s. 58, and Fin. Act, 1914, s. 13 (2).

(*a*) Some practitioners state the rate at which they believe that estate duty will be payable, but this is not wise, as it is not possible to prove what it will amount to. Any evidence tending to show that the amount to be aggregated will be but small should be furnished.

IX.

Furniture (*a*).

1. *Biddings*, p. 245 (*b*).

2. The pchasers shl when required pay down immedly a deposit of 5s. in the pound, or such other sum as the auctioneer may name in pt paymt, each deposit shl be applicable to any or all lots pchased, & shl give their names & addresses when required, in default of wch the lot or lots so pchased shl be at the disposal of the auctioneer. Deposit.

3. No lot shl be removed durg the progress of or on the days of sale. The lots shl be taken away with all faults, imperfections Removal.

3. No lot to be removed durg the progress of or on the days of sale. The lots to be taken away with all faults, imperfections & errors of every descron at the pchaser's expse & risk, on the two days followg the last day's sale & the remr of the pchasemoy shl be pd bfe delivery, the auctioneers not being responsible for the correct description, genuineness or authenticity of, or any default or defect in any lot & making no warranty (*c*) whatever. In cases where one buyer pchases more than one lot the whole of the acct of the lots pchased shl be pd bfe any lot be delivered, & no allowce whatsr will be made for error in descron or quantity, but the lots shl be cleared as shown at the sale. If from any cause the auctioneers are unable to deliver a lot, the deposit-moy (if any) shl be returned to the pchaser witht any compenson in respt of such non-delivery. Completion.

4. All lots left after the time specified will be liable to any expses that may arise from their not having been cleared in accordce with the 3rd condon. Lots cleared.

(*a*) No memorandum is required in this case, as the contract becomes enforceable by the payment of the deposit: Sale of Goods Act, 1893, s. 4. Notwithstanding that Act, a contract for the sale of goods not to be performed within a year is within s. 4 of the Statute of Frauds: *Prested Miners Co.* v. *Garner, Ltd.*, [1911] 1 K. B. 425. An auctioneer's memorandum of contract of sale of moveable chattels is a bill of sale within the Bills of Sale Act, 1878, if no part of the purchase-money is paid, no earnest given, and no part of the goods is accepted and received by the purchaser, see the Sale of Goods Act, 1893 : *Re Roberts*, 36 Ch. D. 196, and cf. *Nicholls* v. *White*, 103 L. T. 800. Memorandum

(*b*) See Sale of Goods Act, 1893, s. 58.

(*c*) As to warranty, see Goodeve, P. P., 5th ed., 69 ; Benjamin on Sale, 657 *et seq* ; *Heilbut, Symons & Co.* v. *Buckleton*, [1913] A. C. 30. An auction room has been held not to be a shop such as to constitute the sale a sale in market overt within the custom of the city of London : *Clayton* v. *Le Roy*, [1911] 2 K. B. 1031. Sale in market overt.

Damage. **5.** The pchasers shl be answerable for all damage they may do to any lot or lots or to the premes in taking down or removg their respective lots.

Non-compliance. **6.** Upon failure of complyg with the above condons the moy deposited shl be forfeited; the lots uncleared within the time afsd shl be resold either by public auction or private contract & the deficiency (if any) at such second sale togr with all charges attendg the same, shl be made good by the defaulter or defaulters at this psnt sale & be recoverable as & for liquidated damages, but any surplus that may arise thfrom shl belong solely to the vendor.

Reservations. **7.** The auctioneer reserves the right of alterg the arrangemt of the lots by selling two or more lots as one lot or in any other way he may think pper; also of withdrawg any lot or lots & of alterg these condons at the time of sale.

8. No cheques, bills of exchange, or promissory notes shl be taken.

9. The auctioneer shl be the sole arbitror in every matter of dispute.

X.

Underwoods (*d*).

Biddings. **1.** No pson shl advance less than 5*s.* per acre at each bddg nor retract a biddg. The highest bidder shl be the pchaser, & if any dispute arises as to the biddgs, the lot shl be put up again at the last undisputed biddg. There is a reserve on each lot.

Deposit and security. **2.** Each pchaser shl immedly pay down a deposit of 10 p.c. on his pchase-moy, & sign an agrmt in the form subjoined, & within 3 days from the day of sale give a bond, with such one or more sureties as shl be required & be approved of by the agent of the vendors, for the due paymt of the balance of his pchase-moy at 10 months from the day of sale.

Boundary fences. **3.** The lots will be sold by the acre, & where any lot abuts on a boundary fence the vendors' workmen will at once proceed to make up such fence, using any materials required from such lot. The acreage of the lots given in the particulars shall

(*d*) As to the liability of the proceeds of sale of underwoods to estate duty where no sale of the property has been effected since the death of a late owner, see Fin. Act, 1912, s. 9, and *post*, p. 321, note (*a*).

be assumed to be correct, and the pchase moy for each lot shall be ascertained in accordance with the acreage so given.

Purchaser to give security.

4. No pchaser will be allowed to commence cuttg any wood until the vendors' agent is fully satisfied with the proposed secy, & at any time afterwds the vendors may call for further approved secy, & give notice throf to any pchaser by a notice left at his last known place of abode, & he shl give the required secy within 6 days from the date of such notice, durg wch time no pt of the lot shl be cut, sold, or removed; & if after the lapse of such 6 days the pchaser refuses or neglects to give the required secy, his lot or lots shl revert to the vendors, with all the labour bestowed thron, & the vendors shl be at full liberty to cut the remr & sell & dispose of the same, & also any wood cut but not removed by the pchaser, either by private sale or public auction, & if any deficiency shl be found the pchaser shl still be liable to make it good.

Cutting.

5. THE wood shl be cut in a pper, customary, & workmanlike mner.

Certain wood not to be cut.

6. THE pchaser shl leave standg all young standard oaks or other tellers, & leave uncut all the firs now standg in any of the woods, doing as little damage as possible in cuttg & clearg the woods.

Cattle to be muzzled.

7. ALL horses, oxen, or other cattle brought into the woods shl be muzzled. If any horse or other beast is found in the woods after the 1st of April witht a muzzle, the pchaser on whose lot it shall be found shl pay 10*s.* for each head to the vendors as liquidated damages.

Not to lop timber.

8. THE pchaser shl not cut, lop, or orwise damage the timber trees, tellers, or saplgs, & shl make satisfon to the vendors for all loss or damage they may sustain by the carelessness or negligce of his workmen or servants employed in the wood, & no pson shl have any authority to permit or order any description of tree or wood to be cut but what is clearly included in the sale & strictly underwood.

Work to be finished by certain date.

9. THE wood shl be all cut from the stubbs bfe the 1st of April, & shl be cleared from the woods on or bfe the 1st of May next, or it will be forfeited to the vendors (*a*).

(*a*) A licence to the purchaser to enter and cut the woods is necessarily implied; and the legal property in the woods when severed vests in the purchaser: *Jones* v. *Earl of Tankerville*, [1909] 2 Ch. 440.

Dogs. **10.** No dogs shl be allowed to go into the woods except by leave of the vendors.

Neglect to comply with conditions. **11.** If any pchaser shl neglect or refuse to comply with any of the above condons the deposit-moy & the wood uncleared shl be forfeited, the lot or lots resold by public or private sale, & the deficiency (if any) on such second resale, togr with all expses attendg the same, shl be made good by the defaulter at the psnt sale, & be recoverable as liquidated damages.

Memorandum of contract. It is hby agrd betn Messrs. ——, *the Auctioneers*, as agents for A. & B. (*b*), the vendors, & —— of ——, that at the sale this day of the underwood belongg to the vendors the sd —— pchased the followg lot at the price below mentd, subjt to the above-printed condons, & that he has pd the sum of £—— as a deposit & in pt paymt of the pchase-moy to the sd Messrs. ——

Lot —— at —— pounds —— shillgs —— pence per acre.

As witness our hands this —— day of ——.

XI.

CONDITIONS *of* Sale *by* TENDER.

1. A pson desirous of pchasg the ppty described in the parlars shl fill in & subscribe his name & address to the tender subjoined to these condons, & send the same remaing attached to the parlars & these condons in a closed cover to the vendor's solors, Messrs. —— of —— on or bfe the —— day of —— next.

Highest tender (*c*). **2.** The vendor does not bind himself to accept the highest or any other tender.

Notice of acceptance. **3.** Bfe the —— day of —— notice of acceptce will be sent to any pson whose tender is accepted & within two days after the rect of such notice (& in this respt time is to be deemed of the essence of the contract) he shl pay to Messrs. —— as stakeholders a deposit of £—— p.c. on the amt of his tender.

[4. *Valuation*, pp. 296 *et seq.*]

(*b*) See *ante*, p. 264, notes; *Scorell* v. *Boxall*, 1 Y. & J. 396.

(*c*) See *South Hetton Coal Co.* v. *Haswell*, [1898] 1 Ch. 465.

5. The pchaser shl pay the residue of his pchase-moy [togr with the amt of the sd valuon] to the vendor or as he shl direct on the —— day of —— at the office of Messrs. —— at wch time & place the pchase shl be completed. Payment.

Insert other condons wch may be appropriate, see Precedent, p. 245, *saying in the condon as to non-compliance with condons* "to resell the ppty either by tender, public auction, or private contract."

FORM OF TENDER.

To Mr. ——, *vendor,*

I hby tender the sum of £—— for the pchase of the ppty described in the above parlars, &, if this tender shl be accepted, I agree to pchase the same at the price of £—— in accordce with the above condons & to pay the pchase-moy [& valuon] & to complete the pchase in accordce with the above condons.

Witness ——

Signature.

XII.

GENERAL CONDITIONS *on* SALE *by* AUCTION *by* ORDER OF COURT (*a*).

1. No pson shl advance less than £—— at each bidding nor retract a bidding. Bidding.

2. The sale is subjt to a reserved bidding [for each lot] wch has been fixed by the Judge to whom this cause [action] is assned. Reserve.

3. The [Each] pchaser shl at the time of sale subscribe his name & address to his bidding in the bidding paper & the abstract of title & all written notices, communications & summonses shl be deemed duly delivered to & served upon the pchaser by being left for him at such address unless or until he is represented by a solicitor. Purchaser to sign bidding paper.

4. The [Each] pchaser shl at the time of sale pay a deposit of £—— p.c. on the amt of his pchase-moy to —— the pson appted by the sd Judge to receive the same. Deposit.

5. One of the Masters attached to the Chambers of the sd Certificate.

(*a*) See R. S. C. Order 51, and the Annual Practice, Appendix L, No. 15; and see *post,* p. 681, note (*d*).

Judge will after the sale proceed to certify (*b*) the result & the —— day of —— at —— of the clock in the —— noon is appted as the time at wch the pchaser[s] may if he [they] thinks fit attend by his [their] solicitor at the Chambers of the sd Judge at the Royal Courts of Justice, London, to settle such certfe. The certfe (*b*) will then be settled & will in due course be signed & filed & become binding witht further notice or expse to the pchaser[s].

Abstract (*c*).

6. The vendors shl within seven days after such certfe has become binding deliver to the [each] pchaser or his solicitor an abstract of the title to the ppty [lot pchased by him] subjt to the stipulons contd in these condons.

7. *Requisitions*, p. 257, f. **20**, *saying* "to Messrs. —— Solicitors, at —— in the County of —— a statemt, &c."

[**8.** *Valuation of timber, &c.*, p. 296, f. **1**.]

Payment of purchase-money.

9. The [Each] pchaser shl under a direction signed by the Master for that ppose to be obtained by him or in case of his neglect under an order for that ppose to be obtained by the vendors at the cost of the pchaser upon applicon at the Chambers of the sd Judge pay the balance of his pchase-moy [together with the amt of the valuation under condon ——] into Court to the credit of this cause [action], A. *v.* B., 19—, A., No. ——, on or before the —— day of ——, & if the same is not so pd then the pchaser shl pay intt on the balance of his pchase-moy [including the amt of such valuation] at the rate of £—— p.c. p.a. from the —— day of —— to the day on wch the same is actually pd. Upon paymt of his pchase-moy in mner afsd the pchaser shl be entitled to posson or to the rents & profits as from the —— day of —— down to wch time all outgoings shl be pd by the vendors & shl (if necessary) be apportioned by the Judge at Chambers.

10. *Statement of incumbrances and offer of inspection of documents*, p. 249, f. **5**.

11. *Conditions as to commencement & evidence of title, identity expenses, stamps, &c.*, p. 299, and *ante*, pp. 253, 254.

(*b*) The certificate becomes binding after the expiration of eight clear days from the filing thereof unless varied or discharged on application by summons made within that time, R. S. C., O. 55, r. 70: see Dart, 7th ed., 1167. As to the power of the Court to refuse the certificate, see *Re Joseph Clayton, Ltd.*, [1920] 1 Ch. 257.

(*c*) See R. S. C., O. 51, r. 2.

12. All facts or matters [certified by the Master or] stated or implied in or by any Order or judgmt or orwise appearing to be proved in the action [proceedings] in wch this sale is made shl be deemed to be conclusively proved. Facts certified or proved in action.

13. The [Each] pchaser shl assume that all necessary consents to the sale have been given and shl not require an abstract of the title nor the concurrence in his convce of any pson bound by the Order for sale whose intt is stated in or appears from the Master's (*b*) Certfe to be equitable only. Equitable interests (*a*).

14. The [a] pchaser shl not make any objection or requon in respt of or require the discharge of any unpaid death duties, but provision shl be made for the paymt thereof by adding to the acct the words "subjt to duty" or by setting aside pt of the pchase-moy or orwise as the Judge shl direct. Death duties (*c*).

15. The pchase-moy shl be pd into Court notwithstdg incumbces & may be applied as a common fund in discharge of such incumbces. A pchaser who has accepted the title & has ascertained that the common fund will be sufficient to answer the claims of all incumbrancers not bound by the order for sale & not consenting to the sale shl not object, though his convce may not have been executed, to the appropriation & carrying over to the pper acct of pt of the common fund sufficient to satisfy such claims, nor to the paymt out of the unappropriated pt of the common fund of the amt due to any incumbrancer consenting to the sale or orwise bound by the order for sale. Discharge of incumbrances immediately payable or otherwise (*d*).

[16. As soon as the certfe of the result of the sale has become binding (*e*) the vendors will give notice to pay off a mtge for £—— & intt affecting the ppty. Notwithstdg the mtge the [each] pchaser shl pay the whole of his pchase-moy into Court & a sufficient pt throf shl be applied in satisfaction of the mtge & the [a] pchaser shl not require his convce to Discharge of incumbrance not immediately payable.

(*a*) See L. P. Act, 1925, s. 204 : *Mostyn* v. *Mostyn*, [1893] 3 Ch. 376 ; *Re Whitham*, 84 L. T. 585 ; and cf. *Jones* v. *Barnett*, [1900] 1 Ch. 370 ; *Hewson* v. *Shelley*, [1914] W. N. 127. The condition in the text is inserted with the object of avoiding any possibility of dispute, see Dart, 7th ed. 1183.

(*b*) On a sale by a County Court say "Registrar's."

(*c*) See L. P. Act, 1925, s. 17.

(*d*) See the provisions of s. 50 of the L. P. Act, 1925, enabling the land to be sold freed from incumbrances.

(*e*) See *ante*, p. 288, note (*b*).

be completed until the mtge has been satisfied unless the mtgee is willing sooner to concur in the convce].

Convey-ance (*f*).

17. The convce to the [each] pchaser shl be made either by a vesting order or by a pson appointed for that ppose by an order of the Court. Any such order shl be obtained at the cost of the [vendors] pchaser requiring the same but the vendors will on the written request made to their solors at least — days bfe the day fixed for complon by more than one pchaser who has accepted the title apply for such order at the cost of the pchasers making such request.

Assur-ance sub-ject to rights, &c.

18. The assurce of the ppty [of any lot wch is to be conveyed subjt to or with the benefit of any right, easemt or covt] shl in case of difference be settled by the Judge at the cost of such psons as he shl direct.

[**19.** *Custody of title deeds if required.*]

Misde-scription.

20. *Misdescription not to annul sale*, p. 259, f. **22**, *adding if compensation is to be provided for*, " but a compensation shl be made to or by the pchaser as the case may be, the amt whrof shl be settled by the Judge at Chambers."

Non-com-pliance with con-ditions.

Lastly. If the [any] pchaser shl not pay his pchase-moy at the time above specified or at any other time wch may be named in any direction or order for that ppose & in all other respts pform these condons his deposit shl unless the Ct orwise directs be forfeited to the vendors & an order may be made by the sd Judge upon applicon at Chambers for the resale of the ppty [lots or lots pchased by the pchaser in default] & for paymt by the pchaser [him] of the deficiency (if any) in the price wch may be obtained upon such resale & of all costs & expses occasioned by such default, but any increase of price on such resale shl belong to the vendors.

(*f*) Cf. f. 13, p. 254, which may sometimes be applicable.

XIII.

CONDITIONS *on* SALE *by* TENDER *by* ORDER OF COURT.

1. THE ppty will be sold under an order of the Chancery Division of the High Court of Justice made on the —— day of —— 19— by Mr. Justice —— in an action Re A. 19—, A., No. —— (*g*).

2. *As to filling up form of tender,* p. 286, f. **1**, *saying* "to Messrs. —— Solicitors at —— in the county of ——" &c.

3. *Highest tender,* p. 286, f. **2.**

4. ON —day the —— day of —— at — o'clock in the —noon the tenders will be considered by one of the masters attached to the Chambers of the sd Judge & he will then certify the name of the pson whose tender is to be accepted & such pson may (if he thinks fit) attend by himself or his solor at the Chambers of the sd Judge at the Royal Courts of Justice, London, to settle such certfe. The certfe will then be settled & will in due course be signed & filed & become binding witht further notice or expense to such pson. On the same day notice of acceptance will be given to such pson & within two days after the rect of such notice (& in this respt time shl be deemed of the essence of the contract) such pson shl pay a deposit of £— p.c. on the amount of his tender to —— the pson appointed by the sd Judge to receive the same. Certificate.

5. *Delivery of abstract,* p. 288, f. **6.**

6. *Requisitions,* p. 288, f. **8.**

7. *Payment of purchase-money,* p. 288, f. **9.**

Insert such other conditions as may be appropriate to a sale by the Court; see Precedent XII., p. 288, *clauses* **10** *to the end.*

FORM OF TENDER.

(*As at* p. 287, *substituting* "if the master certifies me to be the pchaser" *for* "if this tender shl be accepted" *and inserting before* "pchase-moy" *the words* "deposit & the balance of the.")

(*g*) This condition will only be required where the particulars fail to state that the sale is made under an order of Court.

XIV.

STATUTORY FORM *of* CONDITIONS *of* SALE *applicable to* CONTRACTS *by* CORRESPONDENCE (*h*).

Date fixed for completion.

1. The date for completion shall, unless otherwise agreed, be the 1st day after the expiration of seven weeks from the time when the contract is made, or if that day is a Sunday, Christmas day, Good Friday or Bank Holiday, the next following working day.

Place for completion.

2. Completion shall take place at the office of the vendor's solicitors, or if the vendor so requires at the office of the solicitors of his mortgagees, if any.

Possession and apportionment of outgoings.

3.—(1) The purchaser paying his purchase money or, where a deposit is paid, the balance thereof, shall, as from the date fixed for completion (but subject to the execution of any conveyance which ought to be executed by him), be let into possession, or into receipt of rents and profits, and shall, as from that date, pay all outgoings, and up to that date all current rents, and all rates, taxes, and other outgoings shall (if necessary) be apportioned, and the balance shall be paid by or allowed to the purchaser on actual completion, and for this purpose the purchaser shall be liable to pay to the vendor a proportionate part of the current rents accrued in respect of the property up to the date fixed for completion :

Provided that all rates shall be apportioned, so far as practicable, according to the period for which they are intended to provide, and not as running from the dates when the same are made or allowed.

(2) Where as respects any rate the date fixed for completion falls between the expiration of the period for which the last rate was made and the making of a new rate, the new rate shall, for the purposes of this condition, be deemed to have been made at

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(*h*) These conditions prescribed by the Lord Chancellor on the 7th day of August, 1925, will apply to contracts for the sale of land by correspondence, subject to any modification or any stipulation or intention to the contrary expressed in the correspondence.

They may also by express reference thereto be made to apply to any contract for the sale of land, and may for this or any other purpose be cited as the Statutory Form of Conditions of Sale, 1925.

the same rate in the pound as that at which the last rate was made, and shall be calculated from day to day.

Interest on purchase money.

4.—(1) If from any cause whatever (save as hereinafter mentioned), the completion of the purchase is delayed beyond the date fixed for completion, the purchase money, or where a deposit is paid, the balance thereof, shall bear interest at the rate of £5 per cent. per annum, from the date fixed for the completion to the day of actual payment thereof.

(2) Provided that, if delay in completion arises from any other cause than the purchaser's own act or default the purchaser may—

(*a*) at his own risk, deposit the purchase money, or where a deposit is paid, the balance thereof, at any bank in England or Wales, in his own name or otherwise, and

(*b*) give notice in writing forthwith of such deposit to the vendor or his solicitors.

and in that case the vendor shall be bound to accept the interest, if any, allowed thereon, as from the date of such deposit, in lieu of the interest accruing after the date of the deposit, which would otherwise be payable to him under this condition.

(3) No interest shall become payable by the purchaser if delay in completion is attributable to—

(*a*) a refusal by the vendor to deduce title in accordance with the contract, or to give an authority to inspect the register kept under the Land Registration Act, 1925, or to convey ; or

(*b*) any other wilful act or default of the vendor or his Settled Land Act trustees.

(4) The vendor shall, as from the date when interest becomes payable under this condition, have the option (to be exercised by notice in writing) of taking an apportioned part of the rents and profits, less apportioned outgoings, up to the date of actual completion, in lieu of the interest otherwise payable under this condition ; and, if the said option is exercised, the same payments, allowances and apportionments shall be made as if the date fixed for completion had been the date of actual completion.

The said option shall not be exercisable in any case in which sub-clause (2) of this clause applies.

Delivery of abstract.

5.—(1) The vendor shall deliver to the purchaser or his solicitor—

(*a*) an abstract of the title to the property sold, or

(*b*) in the case of land registered with an absolute or good leasehold title, the particulars and information which ought to be furnished in lieu of an abstract, with a written authority to inspect the register,

and, in either case, within fourteen days from the date when the contract was made.

(2) Where land is registered with a possessory or qualified title, the abstract (if any) shall only relate to estates, rights, and interests, subsisting or capable or taking effect prior to the date of first registration, or excluded from the effect of first registration, and dealings therewith, and subject as aforesaid, the foregoing provisions relating to absolute or good leasehold titles, shall apply.

Requisitions.

6.—(1) The purchaser shall within fourteen days after the actual delivery of the abstract, or of the said particulars and information, whether or not delivered within the time prescribed, send to the solicitors of the vendor a statement in writing of all the objections and requisitions (if any) to or on—

(*a*) the title or evidence of title,

(*b*) the abstract or the said particulars and information,

(*c*) the contract, as respects matters not thereby specifically provided for,

and subject thereto the title shall be deemed accepted.

(2) All objections and requisitions not included in any statement sent within the time aforesaid, and not going to the root of the title, shall be deemed waived.

(3) An abstract or the said particulars and information though in fact imperfect, shall be deemed perfect, except for the purpose of any objections or requisitions, which could not have been taken or made on the information therein contained.

(4) An answer to any objection or requisition shall be replied to, in writing, within seven days after delivery thereof and, if not so replied to, shall be considered satisfactory.

Power to rescind.

7.—(1) If the purchaser shall take or make any objection or requisition, which the vendor is unable to remove or comply with, and the purchaser shall not withdraw such objection or requisition within ten days after being required, in writing, so to do, the vendor may, by notice in writing delivered to the purchaser or his solicitor and notwithstanding any intermediate negotiations, rescind the contract.

(2) This condition does not apply so as to prevent the enforce-

ment by a purchaser, of any right conferred on him, by section forty-two of the Law of Property Act, 1925.

(3) If the contract is so rescinded the vendor shall, within one week after default is made in complying with the requirement to withdraw the objection or requisition, repay to the purchaser his deposit money (if any), but without interest, and the purchaser shall return forthwith all abstracts and papers in his possession, belonging to the vendor, and shall not make any claim on the vendor for costs, compensation or otherwise.

Preparation of conveyance.

8.—(1) The conveyance or instrument of transfer to the purchaser, shall be prepared by him and at his own expense, and the draft thereof shall be delivered at the office of the solicitors of the vendor at least ten days before the date fixed for completion, for perusal and approval on behalf of the vendor and other necessary parties (if any).

(2) The engrossment of such conveyance or transfer, for execution by the vendor and other necessary parties (if any), shall be left at the said office within four days after the draft has been returned approved on behalf of the vendor and other necessary conveying parties (if any).

(3) Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition.

Power for vendor to resell after notice.

9.—(1) If the purchaser shall neglect or fail to perform his part of the contract the vendor may give to the purchaser or to his solicitor at least twenty-one days' notice in writing specifying the breach and requiring the purchaser to make good the default before the expiration of the notice.

(2) If the purchaser does not comply with the terms of the said notice—

(*a*) the deposit money, if any, shall, unless the court otherwise directs, be forfeited to the vendor, or, in the case of settled land, to his Settled Land Act trustees ;

(*b*) the vendor may resell the property without previously tendering a conveyance or instrument of transfer to the purchaser ;

and the following provisions shall apply.

(3) Any resale may be made, by auction or private contract, at such time, subject to such conditions, and in such manner generally, as the vendor may think proper, and the defaulting purchaser shall have no right to any part of the purchase money thereby arising.

SPECIAL CONDITIONS.

I.

Valuations *of* Timber, Fixtures, &c. (*a*).

Timber (*b*).

1. The timber & timber-like trees, down to the value of one shillg per stick, pollards, tellers & underwood down to the stub [& the growg crops] shl be pd for by the pchaser at a valuon to be made, at the joint expse of the vendors & pchaser, by two psons, one to be named by the vendors, & the other by the pchaser [within — days after the Master's certfe has become binding], or by an umpire to be named by the valuers bfe proceeding to the valuon, but if either the vendors or pchaser refuse or neglect to name a valuer, or to notify the same in writg to the other party within [the time above specified] 10 days after being requested by such party so to do, or if either of the valuers shd refuse or neglect to act for 10 days after receiving notice in writg from the other valuer callg upon him so to do, then the valuon shl be made by the valuer (if duly notified as afsd) of the other party alone, *or* "by the auctioneer, or failg such valuon, at their fair value": And the price throf shl for all the pposes of these condons

As to valuations.

(*a*) As to sales by valuation, see Dart, 7th ed., 242. As to the difference between an appraisement by valuers and an arbitration, see *ante*, p. 174.

As to sales of timber.

(*b*) The word "timber" in a contract for sale has the same meaning as in disputes between tenant for life and remainderman: *Re Tower's Contract* (1924), W. N. 331. As to the sale of timber on settled estates separately from the land, see S. L. Act, 1925, s. 66, *Re Llewellin*, 37 Ch. D. 317; and see *Cockerell* v. *Cholmeley*, 3 Russ. 565 (discussed in *Re Duke of Rutland's S. E.*, [1900] 2 Ch; 206); *Doran* v. *Wiltshire*, 3 Swanst. 699; 3 Dav. Prec., 3rd ed., 295. As to the purchaser's right to specific performance of a contract for the sale of timber separately from the land, see *Jones & Sons, Ltd.* v. *Earl of Tankerville*, [1909] 2 Ch. 440. As to timber estates, see *post*, *sub tit.* "Direction and Consent."

Estate duty.

As to the circumstances in which estate duty will be payable in respect of growing timber, trees or wood upon a sale thereof either with or apart from the land on which they are growing, see Fin. (1909–10) Act, 1910, s. 61 (5); Fin. Act, 1912, s. 9; *Re Smyth*, [1918] 1 Ch. 118, and *post*, p. 311, note (*g*).

(except as to paymt of deposit) be deemed to be pt of the pchase-moy.

2. The timber & other trees [& the underwood] on each lot shl be pd for by the pchaser in addon to the amt of his biddg at the price named in the parlars, psuant to a valuon made previously to the sale by Mr. ——, & the amt of such valuon shl for all the pposes of these condons (includg paymt of the deposit) be deemed pt of the pchase-moy. The same. Another form.

3. The shop & [tenant's] fixtures, fittgs, & furniture in or upon the ppty [any lot] shl be pd for by the pchaser at a valuon to be made, &c., *as above*, f. **1**, *adding in the case of leasehds*, " & the decision of the auctioneer," *or*, " valuers or umpire," as to what are tenant's fixtures or fittgs shl be conclusive. Fixtures and furniture.

4. The pchaser shl take & pay for at a fair valuon to be made by two referees, to be named one by the vendors & the other by the pchaser, or by an umpire to be named by such referees bfe beginng the valuon, the [crops &] stk (live & dead), & the hay or other fodder, straw & manure, & the tillages & acts of husbdry, *or*, " the ploughgs, seeds, & sowgs, labour on manures & work done on the land after harvest, & the labour on the fallows," & other tenant right as usually taken in this district by an incomg farm tenant from an outgoing one, such valuon to be made on the basis of the Agricultural Holdings Act, 1923, previous to complon, from which time the same resply shl be at the risk of the pchaser, & he shl be entitled (on paymt of the balance of the pchase-moy & the amt of such valuon) to enter into occupon : [but the vendors shl be entitled to the use of the barns, granary, & yards, until the — day of — next, for the ppose of housg, thrashg, & marketg the psnt yr's crops.] Crops, farming stock, tillages, &c., when farm sold as going concern (*a*).

5. Where a tenant sustains damage to his crops by game & gives notice in writg throf psuant to the Agricultural Holdings Act, 1923, bfe the day fixed for complon the vendor shl indemnify the pchaser, but if the tenant gives such notice on or after that day the pchaser shl indemnify the vendor against the compenson (if any) to wch the tenant shl be entitled in respt of such damage. Compensation for damage by game (*b*).

(*a*) The sum payable on a farm valuation by an incoming tenant is generally subject to rent due to the landlord, see *Stafford* v. *Gardner*, L. R. 7 C. P. 242.

(*b*) See Agricultural Holdings Act, 1923, s. 11.

Game preserving.

6. Unless an arrangemt shl be made for givg the pchaser the control of the game preservg pendg the complon of the pchase, the vendors will continue to preserve as if they were going to continue the enjoymt of the este, & the pchaser shl on complon pay to them the sum of £—— for the expses throf. In either case the pchaser shl indemnify the vendor against the compenson (if any) to wch any tenant may become entitled in respt of damage to his crops by game.

Public house valuations (*c*).

7. The pchaser shl take at a fair valuon, to be made by two appraisers (one to be appted by the vendors, & the other by the pchaser), or their umpire to be chosen in the usual mner, all the furniture, tenant's fixtures, fittgs, & effects on the premes (other than the stk-in-trade, & such things as the vendors may desire to remove), & the decision of the appraisers or umpire as to what are tenant's fixtures & fittgs shl be conclusive. The pchaser shl also take such of the stk-in-trade upon the premes as shl not have been sold or disposed of at the time of complon accdg to the valuon of two gaugers, one to be appted by the vendors, & the other by the pchaser, or their umpire to be chosen in the usual mner, & the amt of the respective valuons, & a proportion for the time unexpired on the day fixed for complon of all sums pd in advance for licences, compenson duty (*d*) & fire insce appertaing to the premes & to the effects thrin, & of all outgoings, shl be pd by the pchaser at complon, & if the pchaser shl neglect or refuse to appt an appraiser for 3 days after being required so to do, or to appt a gauger on request, or if the appraiser or gauger appted by the pchaser shl neglect or refuse to nominate an umpire on request or to proceed in the valuon, the appraiser or gauger appted by the vendors shl make the valuon alone, & the same shl be bindg on the pchaser.

The same. Another form.

8. The pchaser shl on complon pay for & in respt of the licences & insces subsistg at the time of complon a sum proportionate to the time unexpired thrin, at the date fixed for complon, togr with a due proportion of the compenson duty pd by the vendors for the year ending April 5, 19—, & the vendors will

(*c*) On the sale of a public-house as a going concern, time is of the essence of the contract: *Cowles* v. *Gale*, L. R. 7 Ch. 12; *Tadcaster, etc.* v. *Wilson* (1897), 1 Ch. 705. The public-house is the place usually appointed for completion.

(*d*) See *Horton* v. *Penn*, [1907] 1 K. B. 561.

(at the expse of the pchaser) do all such acts for transferrg the licenses & insces to the pchaser or his nominee and, pending the transfer of such licences, for obtaining the necessary authority for the purchaser or his nominee to carry on business on the premises as are usual in like cases, & in the event of the licences or insces havg expired will, if required by & at the expse of the pchaser, apply for & endeavour to obtain a renewal throf resply to him or his nominee, but complon shl not be thby delayed (*e*).

II.

As to Commencement *and* Deduction *of* Title.

Title commencing with a conveyance (*a*).

1. The title shl commence with a convce on sale, dated, &c. [& the pchaser shl not require the production of or investigate or make any objection or requon in respt of the prior title, whether the same shl appear to be in the vendor's posson or power, or not.]

Another form.

2. The equitable title shl commence with a convce on sale, dated, &c. [*or*, "the will, &c.," *see form* **3**]. The legal title shl commence with a transfer of mtge, dated, &c.

Enfranchised land.

3. The ppty which was enfranchised in the year —— was formerly copyhold held of the manor of ——. The freehold title shall commence with the deed of enfranchisement *or*

(*e*) As to the vendor's obligation in respect of the licence, see *Tadcaster Tower Brewery Co.* v. *Wilson*, [1897] 1 Ch. 705; Williams, V. & P., 3rd ed., 464. The incoming tenant must not carry on the business until the licences are transferred to him: *Barnard* v. *Barton*, [1906] 1 K. B. 357, or he has obtained a protection order under s. 88 of the Licensing (Consolidation) Act, 1910: see *Jones* v. *Hatherton*, [1917] 2 K. B., 412, and *post*, p. 385.

As to carrying on business.

(*a*) As to this condition, see the L. P. Act, 1925, s. 45 (1), and *ante*, p. 236. It is in all cases desirable to state the nature of the deed made the root of title, and in some cases (as where the deed is voluntary), it is necessary to do so: *Re Marsh & Earl Granville*, 24 Ch. D. 11. It should be borne in mind that trustees may be deterred from bidding where too short a title is offered, although if it should appear that it is a good holding title they might be protected by the T. Act, 1925, s. 8 (3). On a contract for sale by private treaty, if it is proposed that the abstract shall commence with a deed less than 30 years old the purchaser should require the vendor to undertake that the deed is a good root of title: Williams, V. & P. 3rd ed. 84.

As to restricting length of title.

"award" (*b*); and the purchaser shall take subject to the reservations & matters contained in the said deed [*if the enfranchisement was by award* "subject to the lord's rights to mines, minerals & other matters (*c*).] The title of the former copyhold interest shall commence, &c.

Enfranchised 1926.

4. The ppty which was formerly copyhd became freehd on the 1st January, 1926, by virtue of the L. P. Act, 1922. No agrmnt as to compensation has at present been made and the ppty is sold subjt to the lord's rights to mines, minerals and other matters & to all manorial incidents. The title to the former copyhd interest shl commence, &c.

Another form.

5. The ppty wh was formerly copyhd became freehd on the 1st January, 1926, by virtue of the L. P. Act, 1922. The ppty is sold subject to the lord's rights to mines minerals & other matters but an agreemt, for compensation for extinguishment of manorial incidents referred to in s. 128 of the L. P. Act, 1925, has been entered into & the compensation moy has been paid (*d*)]. The title to the former copyhd interest shl commence, &c.

Title commencing with a will (*e*).

6. The title shl commence with the will of a testor, who died in 18—, & no proof of the testor's seisin or ownership shl be required, [*or*, "The title shl commence with a general devise of real este made by the will of a testor, &c., & the pchaser shl assume the seisin or ownership of the testor, & that the ppty passed by the devise"]. [*Earlier title not to be called for, see form* **1**.]

Title under

7. The title shl consist of the will of a testor who died in

(*b*) The purchaser cannot call for the title to make the enfranchisement: L. P. Act, 1925, s. 44 (6), and see *ante*, p. 237.

(*c*) See Copyhold Act, 1894, s. 23. As to the rights of way reserved by this section, see the dictum of Scrutton, L.J., in *Derry* v. *Sanders*, [1919] 1 K. B., at p. 239; and as to the importance of the condition where the enfranchisement does not operate to pass the title to the mines and other rights mentioned in the section, see *Bellamy* v. *Debenham*, [1891] 1 Ch. 412.

(*d*) If the compensation has been made payable as a rentcharge the conditions should state that the property is sold subject to the rentcharge, which should also be mentioned in the particulars. The title of the person entering into the compensation agreement as lord cannot be questioned by the parties: L. P. Act, 1925, s. 138 (10). See, further, p. 314, *post*.

(*e*) The alternative forms in the text are fully appropriate only to the case of a testator dying seised in fee simple free from incumbrances, and do not preclude the necessity of showing title to any estate or interest outstanding as the time of his death.

18—, contg a general devise to the father of the psnt vendor, & a statutory declaron that since 18— (in wch yr his father died intestate, leavg the vendor his hr) the vendor has been in the undisputed posson & enjoymt or rect of the rents of the ppty. The pchaser shl be satisfied with the above, & shl not require any further or other title or evidce of title. will, intestacy and possession.

8. The title shl commence with an indre dated, &c., being an apptmt under a power contd in an indre dated, &c., & the pchaser shl not require, &c., *form* **1**. Title commencing with an appointment (*f*).

9. The title shl commence as to the greater pt of the ppty with a pchase deed in 18—, & as to the remr of the ppty (being the enfranchised copyhd pt) with a surr on sale *or* "surr to & admittance of X on sale to him" in 18— [*or*, "The title to the ppty shl commence as follows, (namely):—As to the great bulk throf [lots ——] with a pchase deed in 18—; as to the portions coloured —— in the annexed plan [lots ——] with a deed of mtge, *or*, "partition," *or*, "settlemt in 18—" (except as to a small piece contg about —— perches, to wch no earlier title will be shown than a convce in 18—); as to certn portions contg about —— acres, wch cannot now be identified or distinguished, but wch are included in that pt of the ppty wch is coloured —— on the plan [lot ——], with the will of a testor who died in 18—, & whose seisin or ownership shl be assumed"], & in every case the respective assurces or documts, with wch it is above stipulated that the title to the respective pts of the ppty [lots] shl commence, shl be accepted as good roots of title, & the prior title shl not be required, enquired into, or objected to, whether the same shl appear to be in the vendors' posson or power or not, & no objection or requon shl be made resptg anything contd or appearg in any of the documts with wch the respective titles commence. Title commencing with several instruments.

10. The title is derived under a peaceable re-entry made in 18— by virtue of a power of absolute re-entry for non-paymt of a perpetual rentcharge of £—— contd in a deed in 18— by which such rentcharge was reserved, & the vendors or their predecessors in title have ever since been in undisturbed Title under re-entry for non-payment of perpetual rentcharge.

(*f*) In the absence of this condition, the vendor might possibly be unable to enforce specific performance: see L. P. Act, 1925, s. 45 (11), and the discussion, Williams, V. & P., 3rd ed. 99.

posson or rect of the rents of the ppty. A statutory declaron or declarons by a pson or psons acquainted with the facts & speakg to the best of his or their knowledge, informon, & belief, shl be accepted as sufft & conclusive evidce of these facts, & that the power of re-entry had arisen & was well exercised, & that the seisin in fee of the ppty was thby acquired discharged of all claims of the previous owner, & no question shl be raised as to the validity of the power of re-entry (*a*).

Option to purchaser to call for earlier title at his own expense.

11. The title shl commence with, &c. But as this condon is only made to prevent expse to the vendors, the pchaser will be at liberty to have the earlier title, commencg with, &c., abstracted & deduced at his own expse provd he shl require the same, by a written notice to the vendors or their solor, within —— days after the delivery of the abstract of the later title [*or* The title shl commence with, &c. The earlier title deeds in the posson of the vendors & an abstract throf may be inspected at any time bfe the sale at the office of the vendors' solors, but no investigon into, or objection or requon in respt of the prior title shl be made subseqtly to the sale.]

Inspection of earlier title before sale.

Proof of title to be partially dispensed with on the ground of a recent investigation.

12. In the yr ——, certn ppty held under the same title as that now offered for sale was sold by the vendors to —— for a sum exceedg £——, upon wch occasion the title was approved after a full investigon [*or*, "The ppty was formerly pt of the —— Este, & was pchased by the late owner, under whom the vendors claim, in the yr ——, on wch occasion the title was fully investigated], of wch fact a statutory declaron, to be furnished, if required, at the expse of the pchaser, shl be sufft evidce (*b*). It is accdly stipulated, in order to save the unnecy trouble & expse of anor investigon of the title prior to the yr ——, that the pchaser shl be content with an abstract commencg with, &c., & shl not call for or investigate or make any objection or requon resptg the earlier title" [*add, if thought fit, an offer giving the pchaser the right of callg for the earlier title at his own expense or inspectg it before the sale, as in form* **11**.]

Title to small lots forming part of

13. As the ppty forms pt of large family estes, & an abstract of the whole title is necessarily voluminous, it is stipulated that, with respt to any lot wch shl fetch less than

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(*a*) See *post*, p. 377, note.

(*b*) In the absence of special contract, facts stated in the conditions must be proved: *Symons* v. *James*, 1 Y. & C. C. C. 487.

£——, the pchaser shl be satisfied with a convce from the vendors, witht requirg any title or evidce of title whatever to be shown, *or*, " shl only be entitled to an abstract commencg with the settlemt, dated in the yr ——, under a power of sale contd in wch the psnt sale is made, & wch contains recitals of the earlier title, & shl not be entitled to make any objection or requon respte such earlier title," *or* " in the case of lots fetchg less than £——, the abstracts will be short summaries of the title only, but the pchasers may have fuller abstracts at their own expse." family estates (*c*).

14. As to certn small portions of the ppty, comprisg togr about —— acres, [wch were pchased by the psnt vendors at various times betn the yrs —— & ——,] the pchaser shl be content with such title as the vendors have accepted on such respective pchases. Purchaser to take such title as vendors have.

15. The abstract shl commence with a deed of convce, dated, &c., wch deduces the title to the ppty by recital from the yr ——, & the pchaser shl be satisfied in all respts with such recital of the prior title & shl not require any evidce or informon as to anythg recited, disclosed, or referred to in such convce or orwise in relation to such prior title. Recent commencement, prior title deduced by recital.

16. An abstract of the title, commencg as above provd, may be perused & examined with the deeds 10 days bfe or at any time after the sale, at the office of the vendors' solors, but to save expse to the vendors it is stipulated that no pchaser shl be entitled to a copy of the abstract, except on paymt of 2 guineas for the same, & unless he applies for it within 1 week of the sale. Restriction as to abstract on sale in small lots.

17. As to any pts of the premes wch have been derived under exchanges the vendors shl not be required to produce any evidence of the title of the psons from whom the same were taken in exchange anterior to the deed or deeds by wch such exchanges were effected, nor to deduce the title to the lands given in exchange, but such exchanges shl be assumed to have been in all respts valid. Exchange (*d*).

(*c*) A condition requiring the purchaser to accept the title does not affect the duty of the vendor of leaseholds to disclose onerous and unusual covenants, or at least to afford the purchaser an opportunity of inspecting the lease: *Re Haedicke & Lipski*, [1901] 2 Ch. 666, and cases cited, *ante*, p. 265, note (*b*).

(*d*) See "Exchanges," Dart, 7th ed. 323.

The same.

18. An agrmt for exchange in 18— does not appear to have been carried out by actual convce, but as the land taken in exchange has ever since been held in accordce with the terms of the agrmt (of wch fact a statutory declaron will be furnished if required at the pchaser's expse), the pchaser shl not require a convce throf to be obtained, or make any objection or requon with reference to such exchange.

Allotment under Inclosure Award (*a*).

19. The title to pt of lot —— shl commence with an award, dated, &c., under an Inclosure Act. The pchaser shl assume the validity & regularity of the award, & shl not call for the title to the lands in respt of [or in exchange for] wch the allotmt was made, but shl assume that the allottee became seised in fee simple of the land allotted, subjt only to the reservons & matters contd in the award [& to the rights of the lord of the manor in respt of minerals or orwise].

The same.

20. As to certn allotmts, the title to wch is derived under an award made in the yr —— under the —— Inclosure Act, the pchaser shl assume the validity & regularity of the award, & that the allotmts were made in respt of [or in exchange for] pt of the lands comprised in a settlemt dated, &c., & so as to follow the title to such lands (*b*).

Title under old deed of gift (*c*).

21. The ppty passed to a former owner by deed of gift dated in the year 18—. The pchaser shl not found any objection or requon on this fact, but shl be satisfied with a statutory declaron, to be made by some one well acquainted with the ppty that possession has been enjoyed in accordance with the title since the date of the deed.

(*a*) As to this and the next form, see Dart, 7th ed., 181, 363; *Jacomb* v *Turner*, [1892] 1 Q. B. 47; explained in *Blackett* v. *Ridout*, [1915] 2 K. B. 415. As to minerals, see *Thomson* v. *St. Catharine's College, Cambridge*, [1919] A. C. 468.

(*b*) See Williams, V. & P., 3rd ed. 393.

Title under voluntary deed.

(*c*) This condition is only required if the deed of gift was made before 29th June, 1893 (the date of the Voluntary Conveyances Act, 1893). If a voluntary settlement is made *bonâ fide* and without any fraudulent intent, it cannot now (after 28th June, 1893) be revoked by a subsequent conveyance for value by the settlor, see the L. P. Act, 1925, s. 173. The burden of proving *bona fides* is on the person supporting the settlement: *National Bank, Ltd.* v. *Behan*, [1913] 1 Ir. R. 512. The concurrence of the settlor in a conveyance made by the persons claiming under the settlement is only useful for the purpose of obtaining his covenants for title, and if the settlement was made before the 29th June, 1893, for the purpose of showing that he has not defeated the settlement.

22. The title depends upon a voluntary convce made to the psnt vendor on the —— day of —— by his father now aged ——. The pchaser shl not make any requon or objection in reference to the solvency or orwise of the donor but shl assume that the donor was at the date of the convce & has since continued amply solvent. Nor shl any requon or objection be made on the ground that este duty will become payable on the death of the donor within 3 yrs from the sd —— day of ——; but the pchaser shl be satisfied with the covt of the vendor to indemnify the pchaser & the pchased ppty against any such duty wch may so become payable (*e*). Title under recent voluntary conveyance (*d*).

23. The vendors are selling under their statutory power as trees of the —— Charity, a scheme for the management of which was established by an order of the Board of Charity Commrs. dated in the year ——. The vendors shl not be bound to furnish any abstract of title to the ppty sold or to produce any deeds or evidence of title other than a copy of the order of the sd Board establishing the sd scheme (and apptg the vendors to be trees of the charity], & vestg the Sale of charity land (*f*).

(*d*) Where a settlement is void as against creditors as being fraudulent under L. P. Act, 1925, s. 172 (1), which replaces 13 Eliz. c. 5, a *bonâ fide* purchaser for value from the persons claiming under the settlement without notice of any fraud, whether his interest is legal or equitable, will be protected: *Halifax Joint Stock Banking Co.* v. *Gledhill*, [1891] 1 Ch. 31. As to transactions void under the statute, see *Re Fasey*, [1923] 2 Ch. 1.

A voluntary settlement is an act of bankruptcy, and the purchaser cannot safely take a conveyance from the donee or his successors in title within 3 months from the date of the settlement. The purchaser would not be protected by s. 3 of the Land Charges Act, 1925, since he would have notice of an available act of bankruptcy. After the lapse of 3 months without any proceedings in bankruptcy the purchaser would be safe in taking a conveyance from the donee: *Re Carter and Kenderdine*, [1897] 1 Ch. 776. Bankruptcy Act, 1914.

As to estate duty see Fin. (1909–10) Act, 1910, s. 59; *Re Weir & Pitt*, 55 Sol. J. 536.

Where property has been sold and conveyed pursuant to a *bonâ fide* bargain at an undervalue, a subsequent purchaser is not concerned to see that the conveyance was properly stamped: *Ibid.*

(*e*) The purchaser, as estate owner, will become accountable for the duty if and when it becomes leviable: L. P. Act, 1925, s. 16 (2); and, if it is not registered as a land charge, will remain liable for its discharge after a resale of the property: L. P. Act, 1925, s. 17 (2), and L. C. Act, 1925, s. 13. If the charge has been registered in the meantime, he will be obliged, on a subsequent sale of the property, to obtain a cancellation of the charge: L. P. Act, 1925, s. 43.

(*f*) As to sales of charity lands, see S. L. Act, 1925, s. 29, *post*, *sub tit.* "Conveyances on Sale," note, and Vol. 2, pp. 282 *et seq.*

legal este in the ppty in the Official Tree of Charity Lands, & a copy of another order of the same Board sanctiong the sale to the pchaser, wch shl be accepted as a sufft title. The purchaser shall assume the validity of every appointment of a new trustee or new trustees of the said Charity made subsequently to the establishment of the sd scheme, and shall accept as correct a list of the present trustees signed by their clerk or secretary.

Land purchased from Railway Company (*a*).

24. As to lot ——, wch was pchased by the vendors in the yr —— at a sale of a portion of the surplus lands of the —— Rly Co, the abstract shl commence with the convce to the vendors, dated, &c., & the pchaser shl not call for or investigate the prior title, or make any objection or requon with respt to the powers of the Co, or their compliance with the requiremts of their Acts with reference to the acquison or sale of the ppty comprised in this lot.

Sale by Railway Company or public body (*a*).

25. THE ppty (with other land) was pchased [with the mines & minerals (*b*)] by the vendors in the yr 18—, for the pposes of their undertakg, *or*, "the pposes authorised by the —— Act," but is no longer required for such pposes, & [as it is the practice (*c*) of the vendors strictly to investigate the title to all ppty pchased by them,] the title to be deduced shl consist exclusively of the deed of convce to the vendors, wch shl be assumed to have been effectual to vest the ppty in them, & it shl also be assumed that they have full power to sell & convey the same, & that the land is not affected by any restrictive covts or condons wch will bind the pchaser.

Sale by Company registered under

26. DEBENTURES have been issued by the vendor Co [secd by a trust deed] creating a floating charge on the ppty. The pchaser shl be satisfied with a written statemt *or* "statutory

(*a*) As to the sale of superfluous land by a railway company, see *post*, p. 716, note.

(*b*) See *post*, p. 713, note (*b*), p. 995, note (*d*).

(*c*) Not infrequently, the title to land taken compulsorily is not carefully investigated by the takers, who rely instead upon their power of buying up omitted interests under s. 124 of the Lands C. C. Act, 1845, which section is not, however, available to subsequent purchasers. On a purchase under the Lands Clauses Acts the purchaser takes the land free from restrictive covenants which revive on its being sold: see *post*, pp. 357, note; 716, note.

The rule as to misleading conditions must be borne in mind where a condition of this nature is employed: see *ante*, p. 240.

declaron " by the secretary of the vendor Co that the debenture intt has been regularly pd, that no pt of the ppal has become due, that no recer has been appointed & that no winding up proceedings have been commenced ; & shl not require the concurrence of the debenture holders [or their trees] in the convce, nor make any objection or requon in respt of such debentures [or trust deed]. Companies Act, 1908.

27. No objection or requon shl be made as to the constiton powers or proceedings of or orwise in relation to a Co by whom the ppty was acquired in 18—, & afterwds sold in 18—, but such acquison & sale shl be assumed to have been valid & effectual in all respts. As to constitution, &c., of company (*d*).

28. By orders of the High Court of Justice made in the yrs —— & —— resply, a Co by whom the ppty was acquired in 19—, was ordered to be wound up, & a liquidator was appointed throf by whom the ppty was sold & a convce executed in the yr ——. The pchaser shl assume the regularity of the winding up proceedings (including the apptmt of such liquidator as afsd) & shl not require any evidence in support throf. As to validity of sale by liquidator (*e*).

29. In the year —— a Co in whom the ppty was then vested as second mtgees was wound up voluntarily & a liquidator was appointed by whom the ppty was sold in exercise of the statutory power of sale then vested in the Co as such mtgees and a conveyance was executed with the concurrence of the first mtgee in the year ——. The pchaser shall assume, &c. The same where the company were mortgagees.

30. The production of a printed copy of the rules of any Benefit Bldg Socy, incorporated or unincorporated, with a copy As to building societies (*f*).

(*d*) As to what is to be deemed due execution of a deed by a corporation aggregate, see L. P. Act, 1925, s. 74.

(*e*) Where a Building Society is being dissolved in manner prescribed by its rules, the provisions of the Building Societies Acts continue to apply as if the liquidators conducting the dissolution were the board of directors of the society : Building Societies Act, 1894, s. 9 ; see *Sun Building Society* v. *Western Suburban, &c. Society*, [1920] 2 Ch. 144, 156.

(*f*) As to evidence of the constitution and rules of the Society, see 6 & 7 Will. 4, c. 32, s. 4 ; the Building Societies Act, 1874, ss. 17, 20 ; and the Act of 1894, s. 26. As to the effect of the statutory receipt on redemption of a mortgage, see the Act of 1836, s. 5 ; and the Act of 1874, s. 42. As to the form of discharge in the case of registered land, see Rule 152. As to Societies formed between 1856 and 1874 under the Act of 1836, see *Re Ilfracombe, &c., Socy.*, [1901] 1 Ch. 102.

of the certfe of the certifying barrister or of the certfe of incorporon (as the case may be) certified by the secretary or other officer of the socy, shl be taken as conclusive evidence that the socy [*or* " The pchaser shl assume that every bldg socy "] was & is duly constituted, & no evidence shl be required of the rules, constiton, or incorporon of any such socy or of the apptmt of any origl or substituted trees, directors, or other officers of any such socy, & the pchaser shl assume that any rect (*g*) given on the redmon of any mtge to any such socy or the trees throf was duly sealed & signed or countersigned by the pper psons & is valid in all respts.

As to friendly societies (*h*).

31. The pchaser shl not require the production of the rules or any informon as to the constiton of any friendly socy to wch or to the trees whrof any of the ppty has been mtged, & shl assume witht any evidence that the psons to whom any such mtge was made, & the psons signg the rect on redmon throf, were resply the duly constituted trees or tree & secretary for the time being of the socy.

As to purchase by trustees of settlement; exclusion of right to abstract of settlement.

32. The ppty havg been pchased in 18— by the trees of a settlemt & conveyed to the uses [to them upon the trusts] throf, & havg been afterwds sold under the powers of [trusts of] such settlemt [under the S. L. Acts, 1882 to 1890], it is stipulated (to save expse) that the pchaser shl accept the recitals of or references to such settlemt & the apptmts of new trees throf, wch are contd in the convces executed on the pchase & re-sale of the ppty, as sufft, & shl not require any abstract or make any requon in respt of the sd settlemt & apptmts of new trees.

The same for purchase without disclosing trust.

33. The ppty, wch is being sold by the vendors as trees of a settlemt dated &c. was pchased in 18— under a power contd in the settlemt for the investmt of the trust moy in the pchase of land [to be held in trust for re-sale] (*i*), but it was conveyed to the trees witht disclosg the trust. The pchaser shl assume that the ppty was pchased in mner afsd & shl be satisfied with

(*g*) As to the statutory receipt given by Building Societies, see *Lloyds Bank, Ltd.* v. *Bullock*, [1896] 2 Ch. 192; and see Vol. II., p. 132, note.

(*h*) See Friendly Societies Act, 1896, ss. 25, 53; and the Amending Act of 1908. As to registered land, see Rule 152.

(*i*) The words in the square brackets should be omitted if the power to purchase land did not provide that it was to be held upon trust for sale. In settlements or wills coming into operation after 1911 a trust for sale of land purchased under such a power is implied: L. P. Act, 1925, s. 32, re-enacting C. A., 1911, s. 10.

a short abstract of the above mentd settlemt, & of an apptmt of new trees throf in 18—, & shl not make any requon in respt of such settlemt & apptmt.

34. The vendors who are trees have to the best of their recollon & belief deposited all notices as to dealgs with the ppty wch they or either of them have received with Messrs. ——, their solors, for safe custody. The pchaser shl be entitled at his own expse to a statutory declaron from the vendors to the effect afsd, & to any informon with respt to any notice in the custody of Messrs. ——, but shl not be entitled to any informon with respt to any other notice if any such there be. As to notices received by trustees (*a*).

35. On a sale of pt of the ppty in 18— by trees of a settlemt a sum of £—— was pd to the tenant for life for the growg underwood. No objection or requon shl be founded on this. Payment of price of underwood to tenant for life (*b*).

36. The ppty was pchased in the yr —— at a sale by the Court in an action for executing the trusts of a will. The master's certfes in the action in wch the este was administered shl be accepted as conclusive evidce of the matters thrin found & certified, & the pchaser shl not require any copies, extracts, or abstracts of the documents or evidence on wch such certfes were founded, or any proof beyond what appears on the record of the pper pties havg been bfe the Court, & shl assume the regularity of the proceedings in the action in all respts (*c*). Proceedings in Chancery.

37. The pchaser shl not require any evidence of the failure of issue of K., named in a deed in 18—, or of the number & names of the chn of L., also thrin named, or that M., one of such chln, died under age & witht havg been married, or of any other matter relatg to the pedigree of the vendors, other than a statutory declaron of those facts lately made by a member of the family, or a copy of a pedigree entered in the books of the College of Arms & signed by a deced member of the family, the statemts in wch shl (witht any further evidence by production of certfes or orwise) be accepted as correct & sufft in all Evidence of pedigree.

(*a*) See *Low* v. *Bouverie*, [1891] 3 Ch. 82; *Porter* v. *Moore*, [1904] 2 Ch. 367; and see 54 Sol. J. 6.

(*b*) See *Re Rosher*, [1899] W. N. 134.

(*c*) See Prec. XII., *ante*, p. 287, and notes.

respts, & no objection shl be taken on acct of the declaron havg been made by an intted pson.

Presumption of death (*d*).

38. The pchaser shl assume that a pson who left this country about 30 yrs ago, & of whom nothing has since been heard, is dead [died bfe ——], upon the evidence afforded by a statutory declaron of those facts by a disinterested pson.

Payment of death duties (*e*).

39. The pchaser shl assume witht enquiry or requon that all duties wch became payable on the death of any pson who died more than —— yrs bfe the date of the sale have been pd.

Payment of estate duty (*e*).

40. On the death of the late owner Mr. ——, in the year ——, the ppty now offered for sale was valued for este duty, & such duty was duly pd accdg to the valuation. The vendors will, upon the request of any pchaser, apply for a certfe of discharge under s. 11 of the Fin. Act, 1894, & produce such certfe when obtained to such pchaser, but no objection shl be raised by a pchaser on the ground that such certfe is not obtained prior to the date fixed for complon, & a pchaser shl not in any case be entitled to defer complon on the ground of the want of such certfe, & if the pchaser shl not make request for production of such certfe bfe the date fixed for complon he shl be deemed to have waived the same. If any further este duty shd become payable, the vendors will duly pay the same. The pchaser shl not be entitled to require a separate certfe of discharge of his lot, but shl be satisfied with the production of any certfe of discharge so as that the same do include his lot.

Non-payment of estate and

41. The ppty became subject to estate and succession duty on the death, on the —— day of ——, 192–, of the late owner ;

(*d*) See *Re Phene*, 5 Ch. 139 ; *Re Benjamin*, [1902] 1 Ch. 723 ; *Re Aldersey*, [1905] 2 Ch. 181 ; *Re Jackson*, [1907] 2 Ch. 354. As to presumption of survivorship when two persons die in same shipwreck, etc., see L. P. Act, 1925, s. 184.

Death duties.

(*e*) In case of deaths after 1925 the purchaser will only be affected by death duties if they are registered as land charges ; see L. Ch. Act, 1925, s. 10 ; L. P. Act, 1925, s. 17 and s. 205 (for definition of " death duty "). And in the case of registered land, a purchaser (being a purchaser in good faith for valuable consideration) taking under a registered disposition is free from the charge for death duties even if it is noted in the register (L. Reg. Act, 1925, s. 73 (1)), and see p. 245, *ante*.

succession duty (*f*).

but the amounts of such duties respvly have not yet been assessed or paid. The purchaser shall not be entitled to delay completion on the ground that such duties or either of them have not been assessed & paid; but in that case shall pay —— p.c. of the balance of the purchase-money into the —— Bank to the credit of a separate account to be kept as a deposit or current account, as the vendor shall determine, in the joint names of the vendor's and the purchaser's solicitors; and the sum so paid shall be applied in payment of the sd duties as and when the same shall be assessed respvly and subject thereto shall be paid to the vendor.

Payment of estate duty on timber, &c., and succession duty, if any (*g*).

42. Upon the death of Mr. —— the late owner of the ppty in the yr ——, este duty at the rate of £—— p.c. on the ppal value of the timber, trees & wood then growing upon the ppty became prospectively payable upon any future sale throf. [During the period wch has elapsed since the death of Mr. —— some timber, trees & wood have been cut or felled & sums amting in the aggregate to £—— have been pd for este duty upon the proceeds of sale throf.] The pchaser shl not be entitled to require [the balance of] the este duty nor the succession duty (if any) payable upon the occasion of the psnt sale in respt of the timber, trees & wood now standing to be discharged prior to complon, but shl be satisfied with the covt of the vendor to indemnify the pchaser & the pchased ppty against the same.

(*f*) See last note. A certificate of discharge from estate duty may be obtained in some cases before the duty is actually paid: see Fin. Act, 1904, s. 11.

(*g*) Where an owner of property has died on or after the 30th day of April, 1909, and no sale of the property has since been effected, estate duty on the principal value of the timber, trees and wood growing upon the property will become payable, at the rate due to the principal value of the deceased owner's estate (ascertained without aggregation of the principal value of the timber), on the occasion of the next sale unless already satisfied out of the proceeds of sale of any timber, trees or wood felled or cut for sale in the meantime: Fin. (1909–10) Act, 1910, s. 61 (5); Fin. Act, 1912, s. 9. The same subsection of the former Act extends to succession duty, as to which see further Hanson, 6th ed., 731. The duty is chargeable under the Acts upon the proceeds of the sale of the timber sold separately from the land, and where the property is settled, is payable therefore by a tenant for life without impeachment for waste who is entitled to receive the proceeds, and is not in that case a charge upon the inheritance: see *Re Smyth*, [1917] 2 Ch. 331, affd., [1918] 1 Ch. 118.

Sale by mortgagee of part of premises demised by superior lease.

43. The ppty is vested in the vendor as mtgee under a mtge by subdemise of part only of the ppty comprised in the superior lease. The mtge deed contains no power of atty to enable the vendor to assign the reversn expectnt upon the mtge sub-term, & the pchaser shl make no objectn or requisitn on acct of the inability of the vendor to assign such reversn (*a*).

Sale by mortgagee under express power (*b*).

44. The vendor is sellg as mtgee under a power of sale contd in the mtge. The pchaser shl not be entitled to any further proof that the mtge-moy remains owing or that the power of sale is pperly exercisable than the production of the mtge-deed nor require the concurrce of the mtgor or any other pson except the vendor in the convce.

Former sale by mortgagee under express power (*b*).

45. The ppty was conveyed to the vendors in the yr —— by a mtgee, under a power of sale contd in the mtge. The pchaser shl not require proof that pper notice to pay off the mgte-moy had been given to the mtgor, or that default had been made in paymt throf, or in any way question the regularity of the sale.

Sale by mortgagees in possession during the war (*c*).

46. The ppty which was mortgaged in the year —— was sold by the mtgees. as mtgees in possession under their statutory power of sale in the year ——. The pchaser shall assume that the possession of the mtgees under the said mtge commenced before September, 1914.

(*a*) See Vol. II., pp. 3 and 4, note. This condition is necessary where the mortgagee is selling his mortgage term only, and is unable to convey or vest the head term. L. P. Act, 1925, s. 42 (5).

(*b*) Having regard to the provisions of the L. P. Act, 1925, s. 104, the conditions in the text can only be required where the sale is made in pursuance of an express power of sale inadequately framed.

Mortgage by deposit.

A mortgagee by deposit has no statutory power of sale, his mortgage not being created by deed: see L. P. Act, 1925, s. 101; and even if a memorandum containing a power of sale accompanies the deposit, the power is an equitable power operating only in equity: L. P. Act, 1925, s. 1 (7) and (8). Unless, therefore, a memorandum giving the right to call for a legal mortgage accompanies the deposit of the title deeds, a mortgagee by deposit must apply to the court for an order for sale of the property, in which case the court can, under s. 90 of the L. P. Act, 1925, either vest the legal estate in the purchaser or appoint a person to convey the property or create and vest in the mortgagee a legal term of years to enable him to carry out the sale.

(*c*) See Courts (Emergency Powers) Act, 1914; Courts (E. P.) (No. 2) Act, 1916; Courts (E. P.) Act, 1917, s. 8. The condition is intended to meet the case of a sale made during the period Sept. 1st, 1914, to Sept. 1st, 1922 (War Emergency Laws (Continuance) Act, 1920), of property mortgaged

47. No objection shl be taken with respt to the terms of the agrmts with the tenants [or on acct of the same havg been entd into by the mtgor alone (*e*)] or any irregularity thrin. As to agreements with tenants.

48. In the yr —— a term was assned to attend the inheritance. The pchaser shl not be entitled to investigate the earlier title to the term or to require any evidence or informon, beyond what is afforded by such assnmt or the documts showg the title to the inheritance, as to the creation of or prior dealgs with the same, *or*, "the vendors shl not [except at the pchaser's expse] be required to show the creation of or to trace the title to any term wch has been assned to attend the inheritance." Satisfied term (*f*).

49. By a deed poll in 18— under the provons of the C. Acts, 1881 & 1882 [L. of P. Act, 1925], pt of the ppty wch was previously leasehd for a long term was expressed to be enlarged by the benefl owner into a fee simple. No objection or requon shl be made on acct of the lease or a copy throf not being forthcomg, or as to the contents throf or the identity of the pcels or orwise in relation thto, & it shl be assumed that the sd deed poll operated as an effectual enlargemt accdg to its tenor. Enlargement of long term under the C. Acts (*a*).

50. A portion of the ppty in the parish of ——, wch is believed to be freehd, subjt only to the fee farm rent mentd in the parlars, has in sevl documts been treated as leasehd witht statg the term of yrs for wch, or the pson under whom, it was supposed to have been held. A statutory declaron will be furnished by a pson who has known the ppty for —— yrs, & for many yrs acted as agent for the owner in collectg the rents & discharging the outgoings, that he has always understood & still believes this land to be freehd. The pchaser shl therefore Mistake as to tenure of land subject to fee farm rent.

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before the 4th of Aug., 1914, or, in the case of an officer or man of His Majesty's Forces, before such officer or man joined the Forces. If the mortgagees had entered into possession or had sold without entering into possession during this period, an order of the Court sanctioning such entry or sale would form part of the title: see *Braybrooks* v. *Whaley*, [1919] 1 K. B. 435.

(*e*) As to this case see L. P. Act, 1925, s. 99.

(*f*) See L. P. Act, 1925, s. 5, and First Schedule, Part II. As to mortgage terms carved out of leaseholds, see sub-s. (2) of that section, overriding *Re Moore & Hulm*, [1922] 2 Ch. 105.

(*a*) See C. Act, 1881, s. 65; C. Act, 1882, s. 11, and L. P. Act, 1925, s. 153.

accept such title to this land as the vendors have, & take a convce throf from them as freehd.

Title acquired by possession.

51. The vendor has been in undisturbed posson of a small pt of the field No. —— on the sale plan for upwards of 12 years, & has not given any acknowmt of the title of any other pson thto to such pson or his agent. The pchaser shl assume that the vendor has acquired the fee simple (*b*) of the sd piece of land, & the vendor will at the request & cost of the pchaser make a statutory declaron as to the truth of the facts stated in this condon.

Waste of manor (*c*).

52. A small pt of the ppty was formerly waste of the manor of ——, & was enclosed with the consent of the homage given at a court baron held on the —— day of ——, as appears by an entry on the Court rolls. It shl be assumed that the same thby became indefeasibly vested in fee simple in the pson who made the enclosure (*d*).

Land enfranchised before 1926 (*e*).

53. As to pt of the ppty wch was formerly copyhd, held of the manor of ——, & was enfranchised in the yr ——, the pchaser shl take subjt to the reservons & matters contd in the deed [award] of enfranchisemt [& to the statutory rights of the lord of the manor in respt of minerals or orwise], [& the pchaser shl not object that the deed contained no re-grant of commonable rights.]

Land enfranchised by L. P. Act, 1922.

54. The ppty was on the 31st December, 1925, copyhd & is now freehd by virtue of the L. P. Act, 1922. No objectn shl be made on the ground that the manorial incidents & other rights reserved to the lord by that Act have not been extinguished or released [*or* the vendor is selling subject to manorial incidents & the lord's rights in respt of minerals or orwise, but

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(*b*) See R. P. Limitation Act, 1874, s. 1: *Glyn* v. *Howell*, [1909] 1 Ch. 666; *Re Atkinson & Horsell*, [1912] 1 Ch. 2.

(*c*) The consent of the Minister of Agriculture and Fisheries was required to an enclosure, if made under the Statute of Merton, by the Law of Commons Amendment Act, 1893, and if made under a copyhold grant, by the Copyhold Act, 1894, s. 81, re-enacting the Copyhold Act, 1887, s. 6. and is now required by L. P. Act, 1925, s. 194, to the inclosure of any land which at the commencement of that Act was subject to rights of common except in the excepted cases mentioned in sub-ss. (3) and (4) of that section. As to consents to inclosures under various statutory powers, see Commons Act, 1899, s. 22.

(*d*) Cf. *Att. Gen.* v. *Tomline*, 15 Ch. D. 150.

(*e*) See *ante*, p. 237, as to the purchaser's right to call for the lord's title.

will at the request & cost of the pchaser arrange for the extinguishment of the manorial incidents before completion] [*or* no further evidence shl be required of the extinguishment of manorial incidents [& the lord's other rights (*f*)] than a rect for the compensation moy] [*or* the pchaser shl pay the compensation moy agreed upon for the extinguishment of the manorial incidents [& rights of the lord to minerals & orwise] which amounts to the sum of £——] [*or* the manorial incidents & other rights of the lord have been extinguished in conson of a rentcharge of £—— a year and the pchaser shl take subject to that rentcharge (*g*)].

Site of road.

55. A ROAD boundg a portion of the ppty was in the yr —— diverted, & the old road or a portion throf togr with a small piece of the adjoing land was thrown into & now forms pt of the ppty in lieu of the land taken for the new road or thby severed from the ppty. The pchaser shl assume the truth of the facts stated in this condon & shl make no objection or requon founded upon such diversion or upon any want of title in the vendor to the old road or the small piece of land.

Site of road and enclosed spaces.

56. If it shall appear that any part of any of the lots was formerly the site of a public road or consists of enclosed waste, common or open land, it shall be assumed that such road was duly closed or that such enclosure was rightly made & that the vendor has a good title thereto; and the purchaser shall take subject to the rights if any, of the Crown or the public or others in any such enclosed land.

Interlineations and erasures (*h*).

57. A DEED dated the —— contains sevl interlineons & erasures wch are not referred to in the atteston. The pchaser shl assume that such interlineons & erasures were made bfe the exon of the deed, & shl make no objection or requon in respt throf.

Execution of

58. IN the yr —— a convce of pt of the ppty was exted

(*f*) By agreement the lord's rights to mines and minerals, sporting, etc., reserved by para. 5 of the 12th Sched. of the L. P. Act, 1922, may be treated as manorial incidents and extinguished in the same way: s. 138 (12).

(*g*) See L. P. Act, 1922, ss. 138 *et seq.*, and Sched. XII., para. 5. If the compensation money has been agreed upon and the purchaser is to pay it the amount should be stated in the particulars of sale as well as in the conditions. Similarly the compensation rentcharge should be mentioned in the particulars. See *Torrance* v. *Bolton*, L. R. 8 Ch. A. 118.

(*h*) As to alterations in deeds, see Norton on Deeds, 26 *et seq.*; *Crediton* v. *Bishop of Exeter*, [1905] 2 Ch. 455.

former conveyance by attorney (*a*).

by atty. No objection shl be made as to the sufficiency of the power of atty, & no proof shl be required that the ppal was then alive, or that the power remained in force.

Another form.

59. Every pchaser shl assume that a power of atty, under wch some of the abstracted deeds purport to be exted, was at the dates of such executions valid & subsisting, witht requirg evidce of the principal being alive or orwise.

III.

Registered Land.

Commencement :— Freeholds registered with absolute title.

1. The vendor [A, of ——] is regrd as proptor of the land described in the parlars (*b*) with absolute title. The pchaser shl be entitled to a copy of the subsisting entries on the register relating to the ppty & to a copy of or sufficient extract from the filed plan, *or* General Map (*c*) [& to a supplementary abstract commencing, &c., showing title to the incumbces, notices of wch were entered on the register at first registron & have not been cancelled or withdrawn (*d*)] & shl not require any further abstract.

Freeholds registered with qualified title (*e*).

2. The vendor [A, of ——] is regrd as proptor of the land described in the parlars with qualified title, excepting from the effect of such registron any este, right or intt arising bfe the——

(*a*) See *ante*, p. 205, and *Re Airey*, [1897] 1 Ch. 164. An irrevocable power to sell land is not avoided by the donor afterwards becoming an alien enemy : *Tingley* v. *Müller*, [1917] 2 Ch. 144.

(*b*) It is the function of the particulars to show what (if any) mines or minerals are excepted from the sale. Rules 53 and 55 contain provisions in reference to the registration of mines and minerals apart from the surface. For forms of transfer of land where all, some or none of the mines and minerals are to be included, and of mines apart from the land, see L. R. Rules, Forms 25–30.

(*c*) See L. Reg. Act, 1925, s. 110.

(*d*) See L. Reg. Act, 1925, ss. 5 and 110.

(*e*) See Elph. Introd., 7th ed. 656. The following stipulation as to the excepted estate may sometimes be inserted in place of the offer of a supplementary abstract: " The pchaser shl assume that the qualifications are correctly stated on the register & shl make no objection or requon in respt throf."

day of —— 18—, *or* " under an indre dated, &c., being, &c.," *and stating shortly the nature of the instrument.* The pchaser shl be entitled, &c., *as in* f. **1**, & to a supplementary abstract of the prior title *or* " of title under the sd indre " commencing, &c., [& to a further abstract commencing, &c., showing title to the incumbces notices of wch were entered on the register at first registron & have not been cancelled or withdrawn.] *Add such special condons as to evidence & deduction of the unregistered title as may be necessary, see* pp. 298 *et seq.*

Freeholds registered with possessory title (*f*).

3. The vendor [A, of ——] is regrd as proptor of the land described in the parlars with possessory title, the first registron having been effected on the —— day of —— 18—. The pchaser shl be entitled, &c., *as in* f. **1**, & to an abstract of the prior title commencing, &c. *Add such special condons as to evidence & deduction of title as may be necessary, see* pp. 299 *et seq.*

Leaseholds registered with absolute or good leasehold title (*g*).

4. The vendor [A, of] is regrd as proptor of the leasehd land described in the parlars with absolute [good leasehd] title The pchaser shl be entitled, &c., *as in* f. **1** [& to a supplementary abstract, &c., *continue as in* f. **1**].

Leaseholds registered with qualified title (*h*).

5. The vendor [A, of ——] is regrd as proptor of the leasehd land described in the parlars with qualified title, excepting from the effect of such registron any este, &c., *as in* f. **2**. The pchaser shl be entitled, &c., *as in* f. **1**, & to a supplementary abstract, &c., *continue as in* f. **2**.

Leaseholds registered with possessory title (*i*).

6. The vendor [A, of ——] is regrd as proptor of the leasehd land described in the parlars with possessory title, the first registron having been effected on the —— day of —— 18—. The pchaser shl be entitled, &c., *as in* f. **1**, & to an abstract of the prior leasehd title commencing, &c. *See* Special Condons, Leaseholds, pp. 322 *et seq.*

Registered land held under unregistered assurance (*a*).

7. The land described in the parlars was pchased by the vendor in the yr —— from X. of —— who is the regrd proptor with absolute title throf, *or, as the case may be,* & was conveyed to the vendor by the sd X. by an unregrd assurce dated, &c., wch is protected by an entry upon the

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(*f*) See *Marshall* v. *Robertson*, 50 Sol. J. 75 ; discussed 53 Sol. J. 80.

(*g*) See as to the effect of registration with absolute title, L. R. Act, 1925, s. 9; with good leasehold title, s. 10.

(*h*) See L. R. Act, 1925, s. 12.

(*i*) See L. R. Act, 1925, s. 11.

(*a*) See *Capital & Counties Bank, Ltd.*, v. *Rhodes*, [1903] 1 Ch. 631, and *ante*, p. 242.

register. Upon complon the vendor will, if required, at his own expse procure the registron of himself as proptor of the land *or* "procure a transfer from the sd X. to the pchaser" (*b*).

Subsale of registered land (*c*).

8. The vendor havg the right to be regrd as [first (*d*)] proptor of the land described in the parlars with absolute title, *or, as the case may be,* under & by virtue of an instrumt of transfer dated, &c., [an indre of convce dated, &c. (*d*)], will, at his own expse, upon complon procure the registron of the pchaser as proptor of the land.

Sale by proprietor of a registered charge (*e*).

9. The vendor is sellg as the regrd proptor of a charge with power of sale in exercise of the power in that behalf conferred on mtgees by the Law of Ppty Act, 1925.

Authority to inspect register (*f*).

10. The vendor shl furnish to the pchaser an authority for him or his solor to inspect the register [& at the request & cost of the pchaser (such request to be made in writing prior to *or* "within —— days after" the sale) shl [also] (*g*) furnish to him [thrwith] (*g*) a certified copy of the existing entries on the register relating to the lot pchased by him & a copy of the filed plan].

Cancellation or withdrawal of notice or entries on the register.

11. Where a notice entered on the register of a lease, sublease agrmt for a lease or sub-lease (*k*), *or* "of an este in dower or by the curtesy" (*l*), *or* "of liability to death duties" (*m*), *or* "of the existence of any overriding interest mentioned in s. 70 of the L. Reg. Act, 1925 (*n*), *or* "of an incumbce affectg the land at first registron" (*o*), *or* of restrictive covenants (*p*) has

(*b*) See L. Reg. Act, 1925, s. 110 (5).

(*c*) See L. Reg. Act, 1925, s. 37.

(*d*) See Rule 72.

(*e*) See the L. Reg. Act, 1925, s. 34 (1).

(*f*) See Rule 287.

(*g*) The words in the brackets may be added where no provision is made for delivery of copies in the first instance. The statutory title is made by the evidence to be obtained from an inspection of the register, or of a certified copy of or abstract from the register, and the abstract and evidence of rights excepted from registration and matters as to which the register is not conclusive. L. Reg. Act, 1925, s. 110 (1) and (2), set out *ante*, p. 271. Unless the purchase money exceeds £1000 the cost of such copies must be borne by the purchaser in the absence of stipulation to the contrary.

(*k*) Rule 186.

(*l*) Rule 190. And see Administration of Estates Act, 1925, s. 45.

(*m*) Rules 191–193.

(*n*) Rule 197.

(*o*) Rule 40.

(*p*) L. Reg. Act, 1925, s. 50. Rule 212.

been cancelled or removed from the register, the [each] pchaser shl assume that the este, liability, rent, right, intt or incumbce intended to be protected by such notice has ceased & no longer affects the land.

12. The vendor shl not be bound to show any title to the easemts, profits *à prendre*, condons & covts for the benefit of the land noted in the ppty register. Easements, &c.

13. An entry has been made in the ppty register of certain easemts over Blackacre, & of certn covts for the benefit of the land now offered for sale resply grted by & contd in an indre dated, &c. The [Each] pchaser shl assume that the benefit of such easemts & covts [so far as they relate to the lot or lots pchased by him] will pass togr with the land on the exon of the transfer of the land. Easements and covenants (*a*).

14. By an indre dated, &c., A. grted the right of way mentd in the parlars over the land regrd under the title No. —— (hrinar called the servient tenemt), to B., his hrs & assns, owners of the land regrd under the title No. —— (hrinar called the dominant tenemt) & by the same indre A. covted for himself, his hrs & assns, with B., his hrs & assns, owners & occupiers of the dominant tenemt to observe the stipulons mentd in the parlars. It is recited in such indre that at the date throf A. was [regrd proptor & was] seised in fee simple [for his own benefit] of the servient tenemt & that B. was [regrd proptor & was] seised in fee simple [for his own benefit] of the dominant tenemt. Shortly after the date of that indre proper entries were made in the ppty register of the dominant tenemt & in the charges register of the servient tenemt of the sd right of way & restrictive condons. The [Each] pchaser shl assume that the burden of the sd right of way & of the sd restrictive condons was thby & still remains imposed on the fee simple of the servient tenemt, & that the benefit throf was thby & still remains annexed to the fee simple of the dominant tenemt. Easements and restrictive conditions.

15. The vendor will at the request & cost of the pchaser, as soon as the title is accepted, lodge at the Land Registry Priority notice (*b*).

(*a*) This and the two following conditions are not strictly necessary, but their insertion may prevent disputes as to what title the purchaser may require in respect of the easements, etc.

(*b*) See Rule 71.

a notice accompanied by the land certfe, reservg priority to the transfer to be made to the pchaser of the ppty [lot] pchased by him.

Provisional registration (*c*).

16. The vendor will, at the written request of any pchaser who has accepted the title, concur with & at the expse of such pchaser in applyg for the provisional registron of such pchaser of the ppty [lot] pchased by him, & will on paymt of the balance of the pchase-moy within the period specified in the applicon hand the land certfe of such ppty [lot] to such pchaser.

Completion.

17. On paymt of the balance of the pchase-moy, the [each] pchaser shl be entitled to a pper transfer under the L. Reg. Act, 1925, of the ppty [lot or lots pchased by him], & to the land certfe (*d*) of such ppty [lot or lots], & to the certfes of any regrd charges discharged out of the pchase-moy, & affectg such ppty [lot or lots] only [& also to have the land certfe & the certfe of any regrd charges affectg such lot or lots & other ppty deposited at the Registry to enable the pchaser to be regrd free thfrom (*e*)], & also to have an applicon signed by all necy pties for the withdrawal of any restron affectg the ppty [lot or lots pchased by him]. Such transfer [& every other instrumt, act, or thing, &c.] to be prepared, &c., *continue as at* p. 254, f. **13**.

Conveyance according to printed form.

18. On paymt of the balance of the pchase-moy each pchaser shl be entitled to an assurce of the lot or lots pchased by him to be effected by an unregrd convce, & a pper transfer.

(*c*) See Rule 138.

(*d*) Where the land certificate comprises land retained by the vendor, it may be convenient to omit the reference to it, and to employ the form as to provisional registration, *supra*.

Variation for outstanding interests and where purchaser is to covenant.

(*e*) Where any outstanding unregistered estate or interest is to be got in, say, "The pchaser shl be entitled to an assurce from the vendor & all other necy pties (if any) of any incumbces, estes, rights & intts wch will not be destroyed by the transfer and registration of the purchaser."

Where the covenants by the purchaser in favour of the vendor are to be given or implied, say, "The pchaser shl at his own expense exte & deliver to the vendor a deed whby the pchaser shl covt with the vendor [to indemnify him against the covts by the lessee contd in the lease mentd in the parlars &] to observe & perform the stipulons contd in the schdle to these condons" [*or* "mentd in clause —— of these condons"].

Such assurce & transfer shl, at his expse, *continue as at* p. 272, *clause* 13, *saying instead of* "convce," "convce & transfer," *except at the end of the form where the phrase will be* "a duplicate counterpt unregrd convce."

Free conveyance (*a*).

19. Each pchaser signg the subjoined form of applicon for provonal registron & [givg notice in writg to the vendor's solor within 7 days after the delivery of the abstract to him, and in this respt time shl be of the essence of the contract, that he will] *or* "signg the subjoined mem electg to" accept the title witht makg any requon in respt throf, shl be entitled, on paymt of the balance of the pchase-moy within 14 days of the sale, to have a land certfe of the lot or lots pchased by him showg him as the regrd proptor throf. Such certfe shall be obtained by the vendor, & delivered to the pchaser free of all expses except the paymt of the *ad valorem* stamp duty on the regrd transfer.

Another form.

20. If any pchaser shl within 14 days after the delivery of the abstract to him give notice to the vendor's solors that he accepts the title witht making any objection or requon & sign the subjoined form of applicon for provisional registron of himself as proptor of the lot or lots pchased by him, he shl be entitled on complon within the period specified in the applicon to have his convce together with the land certfe of such lot or lots [& if he elects to leave pt of his pchase-moy on mtge, the above mentd mtge, regrd charge & confirmatory deed] free of all expenses except *ad valorem* stamp duty.

Rights of purchaser till registration (*b*).

21. After complon & until the pchaser [of any lot] shl be regrd as proptor [of such lot] such pchaser shl have the same rights as if the certfe [& certfe of charge] handed to him had been deposited with him to secure his pchaser's lien.

Completion when liability attaches

22. The pchaser shl be regrd under the L. Reg. Act, 1925, as proptor of the ppty [lot or lots pchased by him] within —— days after complon & shl within that time produce the

(*a*) See Rule 38. The transfer will have been delivered to the Registrar in accordance with the rule, and the provisional registration will be free of discharged incumbrances. If the land is not registered, but is in a compulsory district, add, "And the convce to the pchaser shl contain an irrevocable power of atty authorisg the vendor or his nominee to apply for registron of the pchaser."

(*b*) This form is intended to be added to f. 17, *ante*, p. 320.

to the holder of the legal estate.

land certfe to the vendor's solor, as evidence that he has been registered (*c*).

Part of the purchase-money to remain on mortgage of registered land.

23. The vendor will, at the written request of the [any] pchaser made to the vendor's solor at least —— days bfe complon, lend to him such sum of moy as he may name in such request (not exceedg two-thirds of his pchase-moy) to be secd on the ppty [lot or lots pchased by him] by a regrd charge. The charge shl be prepared by the vendor's solor, & shl contain such provons as shl be reasble. The pchaser shl immedly after complon execute & deliver the charge & apply for the registron of himself as proptor under the L. Reg. Act, 1925, of the ppty [lot or lots pchased by him], & leave with the Registrar the instrumt of charge for registron.

IV.

Leaseholds (*d*).

Old lease (*e*).

1. The pchaser shl be furnished with an abstract of the lease, dated, &c., under wch the ppty is held, & of an assnmt of such lease, dated, &c., & the subsequent title, & shl not question the validity of the lease, or make any objection or requon in respt of the intermediate title to the premes betn the lease & the sd assnmt, notwithstdg any recital of or reference to such title contd in the assnmt or any subsequent documt, but shl assume that the sd assnmt vested in the assnee a good title for the residue of the term.

Renewable leaseholds.

2. The abstract shl commence, as regards the vendors' [or leaseholders'] title, with a lease dated in ——; & the pchaser shl not make any objection or requon resptg the earlier leasehders' title or the title of any of the lessors, nor require any evidence, beyond what appears on the lease, that the lessee of

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(*c*) For leaseholds, see form given in note (*b*), p. 267, *ante*.

(*d*) See *ante*, pp. 234 *et seq.*

(*e*) In the absence of a condition, the lease, but no other document prior to the commencement of the title, must be abstracted: see *Frend* v. *Buckley*, L. R. 5 Q. B. 213; *Williams* v. *Spargo*, [1893] W. N. 100, Dart, 7th ed., 330; Williams, V. & P., 3rd ed., 90, and see *ante*, p. 234. The title subsequent to the lease need not be shown further than for 30 years next before the contract.

—— was the owner of the whole intt in the previous lease thby expressed to have been surrendered ; & inasmuch as the lessors on each renewal required the surrendered lease to be delivered up, the pchaser shl be satisfied as regards such surrendered lease with the production of a documt purportg to be a copy or draft throf, & shl not require any proof of the surr throf beyond what appears in such new lease. By the L. P. Act, 1922, this lease has been converted into a lease for 2000 yrs from the renewal in the year ——. The additional rent payable in respt of fines has not yet been agreed on, but the vendor estimates that it will amount to —— per annum (*f*).

Another form.

3. The ppty is held for the residue of a term of 2000 yrs commencing on —— into wch a perpetually renewable lease was converted by force of the L. P. Act, 1922. The vendor's title shl commence with a renewed lease dated etc. & granted in conson of the surr of the old lease and the paymt of a fine. The pchaser shall assume that the lessor was entitled to renew & to receive the fine, & that the lessee was entitled to surr the old lease. The pchaser shall not require proof that the pson entering into the agrmt dated —— —— 1926 for conversion of renewal fines into additional rent was entitled as lessor to enter into that agrmt.

Underlease ; or where part only of the property in the lease is sold (*a*).

4. No objection shl be taken, or indemnity required on acct of the lease or agrmt under wch the ppty [any lot] is held being an underlease, or agrmt for an underlease, or on acct of [such lease, or agrmt, or] the superior lease, comprisg other ppty besides the ppty sold [such lot] or being at a larger rent than the underlease or agrmt [or on the ground of the lessor not havg concurred in any apportionmt or exclusive charge of rent], or by reason of any variance betn the covts, provons, & condons in the superior lease & the underlease or agrmt or for any other reason connected with the superior lease.

The same.

4A. The abstract shl commence with the superior lease & the pchaser shl not call for, or make any objection or requon

(*f*) This form may be found necessary if a sale is made soon after January, 1926. After the additional rent into which the fines will be converted (see L. P. Act, 1922, Sched. XV., para. 12) has been fixed, Form 3 should be employed. In course of time, it will be possible to make the title commence with the assignment of the 2000 years' term and Form 3 will require modification.

(*a*) See *Darlington* v. *Hamilton*, Kay, 550 ; *Creswell* v. *Davidson*, 56 L. T. 811 ; *Re Lloyds Bank, Ltd., & Lillington*, [1912] 1 Ch. 601.

concerng the title of the superior landlord, or require any proof of the pformce of the covts in the superior lease.

Performance of covenants where rent nominal or charged on other property (*b*).

5. It shl be assumed witht evidence that [all rent accrued due under the lease has been pd, & that] all the covts in the lease have been duly pformed or that any breach throf has been effectually waived up to the complon of the pchase.

6. The covts by the vendor for title shl be qualified so as not to include a covt on his pt that the covts to repair & paint, *or as the case may be,* contd in the lease under wch the ppty is held, have been pformed.

Sale subject to broken covenants (*c*).

Long term of years created by an old will.

7. The title to lot —— shl commence with an indre dated, &c., wch contains a recital that the ppty comprd in this lot was then held for the residue of a term of 900 years (*d*), commencg from the death of & created by the will of a testor who died in the yr ——. The pchaser of lot —— shl accept such recital as full & sufft evidce of the creation & duration of the sd term & is not to require any abstract to be supplied of the sd will or of the intermediate title betn the death of the sd testator & the sd indre of the —— day of —— or to investigate or make any objection with regard to such intermediate title, or require the production of the probate or any other evidence (except the sd recital) of the sd will or proof of the death of the sd testor, or of the creation or subsistence of the sd term, & shl for all pposes & witht any further evidce assume that the sd term is now subsistg & that the ppty comprised in lot —— is now held for the residue throf free from any rents, covts, or condons.

Non-execution of lease by one lessor.

8. One of the ten trees of the —— Charity, who are named as lessors in the lease of, &c., referred to in the parlars, did not execute such lease. The pchaser shl not on this ground

(*b*) As to this condition, see *ante*, p. 238 ; *Re Moodigs & Yates*, 30 Ch. D. 344 ; *Lawrie* v. *Lees*, 7. App. Cas. at pp. 32, 38 ; 26 Sol. J. 445 ; *Re Highett & Bird*, [1903] 1 Ch. 287 ; explained in *Re Allen & Driscoll's Contract*, [1904] 2 Ch. at p. 231.

(*c*) The general condition providing for the indemnity of the vendor against rents and covenants (*ante*, p. 267, f. 16) should in this case be made to extend to " any existing breaches of the covts to repair & paint."

(*d*) As to the enlargement of long terms into fees simple, see L. P. Act, 1925, s. 153, which re-enacts s. 65 of the C. A., 1881, as amended by s. 11 of the C. A., 1882, with the further amendment (sub-s. (4)), enabling enlargement to be made if the rent (not exceeding £1) has been paid for 12 years, of which 5 at least have elapsed since 1925.

question the validity or require any confirmon of the lease, but shl accept as sufft evidence of validity & existce throf the production of a rect for the last half yr's rent accrued due prior to the complon of the pchase.

Former assignments without licence.

9. Lots —— are held under leases from the —— Co. wch contain restrons against alienon or underlettg witht licence, & also require that all writgs relatg to the premes shl be prepared by the clerk of the lessors. The pchasers shl not make any objection or requon in respt of any dealgs with the leases appearg to have taken place witht licence or in respt of the insufficiency of any licence, or on acct of any instrumts relatg to the premes not appearg to have been prepared by the clerk of the Co.

Licence to assign (*a*).

10. The lease of lot —— contains a restriction agst alienon or underlettg witht the licence of the lessor. The pchaser shl not enquire into the title of the pson by whom the licence (wch will be procured by the vendors at their own expse) may purport to be signed, or his right to grt the same, nor make any objection or requon resptg the sufficiency or form of such licence.

The same.

Purchaser to take underlease if necessary (*b*).

11. A licence from the respective lessors to assn the leases [of lots —— & ——] being necy, the vendors will endeavour to obtain such licences at their own expse, but in case the lessor shl refuse licence to assign the sd leases or either of them to the pchaser [of any lot], but shl be willing to grant licence to assign the same to a tree for him, the sale shl be carried out by an assnmt to such tree, but if the lessor shl refuse licence to assign the sd leases or either of them to any pson, then the contract for sale of that lot wch is held under such leases or

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(*a*) It is the duty of the vendor to try and obtain the licence: *Lehmann* v. *MacArthur*, L. R. 3 Ch. 496. If the landlord refuses, the purchaser cannot recover damages from the vendor for loss of his bargain: *Bain* v. *Fothergill*, L. R. 7 H. L. 158; cf. *Pease* v. *Courtney*, [1904] 2 Ch. at p. 512; *secus*, if the vendor does not try to obtain the licence: *Day* v. *Singleton*, [1899] 2 Ch. 320: cf. *Re Daniel*, [1917] 2 Ch. 405; *Braybrooks* v. *Whaley*, [1919] 1 K. B. 435. As to when the licence should be obtained, see *Ellis* v. *Rogers*, 29 Ch. D. 661. Unless the lease contains an express provision to the contrary, no fine for such licence is now payable: see L. P. Act, 1925, s. 144. The section is retrospective: *West* v. *Gwynne*, [1911] 2 Ch. 1. As to licence to assign, see *post*, *sub-tit.* "Leases (Houses)."

(*b*) See *Crusoe* v. *Bugby*, 2 W. Bl. 766; *Gentle* v. *Faulkner*, [1900] 2 Q. B. 267; *Grove* v. *Portal*, [1902] 1 Ch. at p. 732.

lease shl become void, & the vendor shl return the deposit to the pchaser throf, but witht intt damages or costs [*or* "shl be carried out by the grt of an underlease to the pchaser for the whole term except the last day."] The pchaser shl not enquire, &c., *as in* f. **10**.

The same. Contract to be void if unobtainable.

12. A LICENCE from the lessor to assn the lease of lot —— being necy, the vendor will endeavour to procure such licence at his own expse, but if he shl be unable to procure the same the contract shl become void & the deposit shl be returned to the pchaser, who shl not be entitled to any intt thron or to his costs of investigatg the title or orwise. If a licence is procured, the purchaser shall not enquire, etc., *as in* f. **10**.

Apportionment of rent where some only of several lots held under one lease (*c*).

13. EACH of lots —— to —— inclusive is sold subjt to the apportioned pt mentd in the parlars of the rent reserved by the head lease by wch the same is held & the covts & condons of such lease so far as they relate to such lot.

Leaseholds in lots held under one lease. One purchaser to take an assignment subject to underleases to the other purchasers (*d*).

14. THE lots [lots —— to ——] being all held under the same lease, the sale [of such lots] shl be effectuated by the pchaser of such one of the lots as the vendors shl think fit takg an assnmt of the lease, subjt to underleases of the other lots, to be previously grted by the vendors to the respective pchasers throf for the whole term less one day, at the respective apportioned rents mentd in the parlars, such underleases contg covts by the respective pchasers for paymt of such respective rents, & the observce & pformce of the covts in the origl lease so far as the same relate to their respective lots, & the sd assnmt contg the usual express or implied covts by the assnee for the paymt, pformce & observce, & indemnity of the vendors [& the este of their testor] in

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(*c*) The head lease under which the lots are held should be expressly included among the documents to be produced for inspection at and prior to the sale. Cf. the general condition, *ante*, p. 268, f. **18**.

As to selling leaseholds held under one lease in lots.

(*d*) There is a want of uniformity in the practice as to the mode of selling leaseholds held under one lease in lots. The more common plan has been to assign the lease to the largest purchaser, by whom underleases are granted to the other purchasers (see the forms of such an assignment and underlease, *post*, pp. 611 *et seq.*); but the plan above adopted of reserving to the vendor the right of determining which purchaser shall take the assignment seems better, as it makes it unnecessary to provide against difficulty which might otherwise arise in the event of the completion of the purchase of any lot being delayed. The above condition also departs from what has been the usual plan in providing that the under-

respt of the rent, covts, & condons of the origl lease. The vendors will, if required, enter into the usual vendor's covts in the assnmt & under-leases (*a*) for title & further assurce (but not so as to render themselves liable in respt of any future breach of any of the covts or condons of the origl lease on the

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leases shall be granted by the vendor before the assignment instead of by the assignee afterwards; which also seems better. The main question is as to the covenants. In the assignment the vendor will, of course if a beneficial owner, enter into the usual vendor's covenants for title (but which, if the underleases are previously granted by him, it is suggested should be subject to the qualification in the text to protect him from liability in respect of future breaches of covenant by the underlessees); or if a trustee or mortgagee, will merely covenant against incumbrances. As to the underleases there is more doubt. In the absence of stipulation each underlessee would be entitled, in addition to the usual covenant by the grantor for quiet enjoyment, to a covenant by him for payment of the rent under the original lease, and (which is somewhat onerous) for performance of the covenants as to the residue of the property: *Brown* v. *Paull*, 2 Jur. (N. S.) 317. It is obviously reasonable that the purchasers who take underleases should not thereby be deprived of the vendor's covenants for title; and in fact if the underleases are granted by the purchaser who takes the assignment of the lease, the underlessees would have the benefit of the vendor's statutory covenants for title in the assignment: see L. P. Act, 1925, s. 76 (6). On the whole, if the vendor grants the underleases, it is conceived that the covenants should be as in the text, which (as qualified above) would not be unduly onerous. If the underleases are granted by the purchaser who takes the assignment, he should covenant in the usual form for quiet enjoyment, and for payment of the rent and performance of the covenants in the head lease, and production of the head lease and other muniments; but in order not to deter purchasers (especially trustees), it may perhaps be better to restrict the covenant for performance of the covenants to the part retained by the covenantor. Covenants for title.

Trustees or mortgagees can exercise the ordinary express or statutory power of sale by granting subleases to some of the purchasers and assigning the head lease to another: *Re Judd & Poland*, [1906] 1 Ch. 684, or even by granting subleases to each purchaser (*ibid.* pp. 691, 693, overruling *Re Walker & Oakshott*, [1901] 2 Ch. 383.

Where the land is registered every underlessee may apply to have notice of his underlease registered: L. R. Act, 1925, s. 48. If the term exceeds 21 years, the underlessee may apply for registration of himself as proprietor in respect thereof (s. 8); and where the land is in a compulsory district and the term is for not less than 40 years from the date of the delivery of the grant, the grant, so far as regards the legal estate, will become void at the expiration of two months from the date thereof, unless, in the meantime, the underlessee has applied for registration of himself as proprietor in respect thereof: s. 123. Registered land.

As to the costs of a sale carried out in this manner, see *Re Webb*, [1897] 1 Ch. 144. Costs.

(*a*) The statutory covenants would not apply to the underleases, except by express incorporation.

pt of any of the pchasers) with the addon in the underleases of the usual acknowmt for production & undertakg for safe custody of the lease & the other documts of title (if any) in the posson of the vendors [*or, if the vendors are trees or mtgees,* "but the vendors being trees [mtgees] will not enter into any covts in the assnmt & underleases, except the usual covt agst incumbces with the addon in the underleases of the usual restricted covt for quiet enjoymt & an acknowmt for production & for delivery of copies of, but witht any undertakg for safe custody (*b*) of the origl lease, &c."]. The sd assnmt shl be prepared in duplicate by & at the expse of the pchaser to whom it is made, & the underleases & counterpts throf shl be prepared by the vendors at the expse of the respective pchasers, such expse not to exceed £——, *or,* "to be accdg to the authorised scale charge under the Solors' Remuneron Act, 1881" (*c*) in each case, exclusive of stamp duty, & shl be in the form wch will be produced at the sale, *or,* "& any question as to the form of the assnmt or any underlease shl be referred for decision to the vendors' counsel." If any lot remains unsold the origl lease & other documts of title (if any) will be retained by the vendors, who shl in that case stand in the place of an assnee of the lease for the pposes of this condon (*d*).

Sale in

15. The ppty is held under an agrmt, dated, &c., for the

(*b*) See *post*, p. 513.

(*c*) It may be better to state whether this is to be a combination of the scale charges for leases and sales, or the latter only, to prevent disputes.

(*d*) Where, as is sometimes desired, an assignment of the lease is to be made to the purchaser of a particular lot, the following should be substituted for the concluding clause in the text: "If any lot remains unsold at the psnt sale the origl lease & other documts of title shl be retained by the vendor until all the lots are sold, & the pchaser of lot —— shl covt with the vendor to grt underleases of the unsold lots when the same shl be sold to the respective pchasers throf for the whole term less one day at the respective apportioned rents mentd in the parlars & contg provons similar to those wch they wd have contd if they had been grted by the vendors at the psnt sale, & so that until such underleases shl be grted the vendors shl pay the sd apportioned rent & pform & observe the covts & condons to be reserved by & contd in the sd respective underleases."

grtg of leases of the sevl tenemts to the vendors, *the builders*, or their nominees (no leases havg yet been grted). A copy of this agrmt may be seen at any time bfe or after the sale at the office of the lessors' solors, durg business hours; but no pchaser shl be entitled to any abstract or copy throf, or to make any objection or requon in respt of anything thrin contd, or in respt of the lessors' title wch shl not be called for, or enquired into. Upon paymt of the balance of the pchase-moy at the time & place afsd, the lessors will grt to each pchaser as nominee of the vendors a lease of the lot or lots, or (in case any pchaser of more than one lot shl so require) a separate lease of each lot pchased by him, every such lease to be prepared by the lessors' solors, & to be at the ground rent & for the term stated in the parlars, & accdg to a form wch may be seen at any time previously to the sale at the office afsd & will be produced at the sale, with such modificons only as the circes of each case may require. Each pchaser shl at the same time execute & deliver to the lessor a counterpt of his lease, & all expses attendg the preparon & the perusal on behalf of & exon by all pties except the vendors of each lease & counterpt shl be borne by the pchaser, *or* " & the sum of £—— shl be pd to the vendors by each pchaser (in addon to the stamp duty) for the expse of the preparon, perusal, & exon by or on behalf of the vendors & lessors of each lease & counterpt."

lots by builders.

Leases to be granted by the freeholder.

16. No objection shl be raised on the ground of any of the underleases to or agrmts with the tenants being at variance with the covts or condons of the origl [or any superior] lease or orwise irregular.

Irregularities in underleases (*e*).

V.

Property *of* Various Natures.

1. The vendors shl not be required to show the boundaries, extent, nature, or constituents of the manor, or to furnish any

Manor (*f*).

(*e*) Cf. f. 47, *ante*, p. 313.

(*f*) Where there are demesne lands or other constituents of the manor, such as mineral rights or an advowson, which are not to be included in the sale, they must be expressly excepted: see 2 Dav. Prec., 4th ed., pt. 2, p. 768, note; Dart, 7th ed. 135. Although copyholds are automatically

Exception of demesne lands, &c.

other evidence or informon in relation thto than may appear from the manorial books & documts in the vendors' posson, & no objection shl be taken on acct of any of such books or documts being defective or wantg. None of the demesne lands of the manor except those expressly mentd in the parlars & those held by copyholders are included in the sale.

Reversion (*g*). **2.** A COPY of the instrumt creating the reversion will be produced at the sale, & may be inspected at the office of the vendors' solors at any time previously, & the pchaser whether availing himself of such opportunity of inspection or not shl be deemed to have full knowledge of the contents throf notwithstdg any partial or inaccurate statemt of such contents in the parlars. The pchaser shl on paymt of the pchase-moy be entitled to all advantages of the sd reversion from the time of sale, & shl bear the duties payable in respt throf on the death of the tenant for life, & if such death shl happen bfe complon the rents & income or posson shl thenceforth belong to the pchaser. If from any cause, *continue as in* f. **4**, p. 248.

Sale of equitable **3.** THE pchaser shall be at the risk of the droppg of the life of the sd ——, & in the event of his death bfe complon shl

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enfranchised on 1st January, 1926, and compensation for manorial incidents will in the course of a few years be ascertained and in most cases paid or converted into a rentcharge, the lord's rights in respect of minerals, sporting, etc., will in most cases be retained, and even if all these rights are included in the compensation agreement the word "manor" is not necessarily obsolete. But if no land is being sold it is not likely that the manor would be put up for sale.

The registration in a compulsory area of "corporeal hereditaments, parcel of a manor, and included in the sale of a manor as such" is not compulsory: L. Reg. Act, 1925, s. 120 (1).

Sale of reversion. (*g*) On a sale of an equitable reversionary interest in land with buildings and timber thereon, the fact, if it be so, that the tenant for life is not impeachable for waste, should be stated as affecting the value. The powers of sale and leasing possessed by the tenant for life under the S. L. Act, 1925, should also be borne in mind as affecting the transaction: see *post*, p. 587. The rule of *Dearle* v. *Hall*, 3 Russ. 1 has been extended to equitable interests in land: L. P. Act, 1925, s. 137; and the purchaser can protect himself by giving notice to the trustees of the settlement.

Registered land. In the case of registered land the purchaser of an equitable reversionary interest in the land can also, it would seem, protect himself by lodging a caution under s. 54 of the L. Reg. Act, 1925; but this is probably not necessary, and it might cause expense to the purchaser; see s. 56 as to a cautioner's liability if he lodges a caution without reasonable cause.

nevertheless pay the pchase-moy & such intt (if any) as may be payable thron accdg to condon ——. life interest (*a*).

4. The vendor shl not be required to show title or evidence of title to any rights of way or water or other easemts or rights of common which are used or enjoyed with the ppty or any pt throf except such evidence as may be in his posson, & a statutory declaron to be made if required at the pchaser's expse that such rights have been used & enjoyed for a period of —— yrs [or upwards] prior to the sale. Rights of way, &c. enjoyed with the property.

5. The production of the rect for the last premium shl be accepted by the pchaser as conclusive evidence (witht proof of the age of the assured, or of any of the facts stated in the declaron on wch the poly was grted, or any other matter) that the poly is valid & subsistg (*c*). Policy of assurance (*b*).

6. The pchaser shl not require proof of the truth of the statemts relatg to the age & state of health of the pson on whose life the poly was effected, or any other statemts contd in the declaron upon wch the poly was based, nor any proof that the pson by whom the poly was effected had then or has since continued to have a sufft intt in the life of the assured to support the assurce (*c*). The same.

7. Pt of the ppty was acquired by the vendor's testor with a ptner who died in 18—, as ptnp or joint ppty. An agrmt betn the testor & the repves of the deced ptner contg an endorsed rect for the pchase-moy payable by the testor thrunder shl be considered as havg been a full settlemt of all questions betn the pties witht production of the ptnp articles, & also as a makg over of all intt of the deced ptner in the ptnp or joint ppty to the testor, & such agrmt shl not now as to any equitable este or intt be required to be carried out by convce, & as to any other matter thrunder shl be assumed to have been fully & effectually carried into effect. Property formerly held in partnership (*d*).

(*a*) The purchaser should give notice to the trustees of the settlement; see note (*g*) on preceding page.

(*b*) Where it subsequently turned out that the assured was dead at the date of the contract, the transaction was set aside, notwithstanding that it had been completed by assignment: *Scott* v. *Coulson*, [1903] 2 Ch. 249.

(*c*) Add if necessary, "All premiums fallg due," etc., as at p. 280, f. 6.

(*d*) See *Re Bourne*, [1906] 2 Ch. at pp. 432, 433, and L. P. Act, 1925, s. 36.

Shares.

8. Each pchaser shl accept a transfer of the shares pchased by him & shl indemnify the vendor as from the date of sale in respt of calls & other paymts in respt of such shares.

VI.

As to Completion.

Execution by attorney (*e*).

1. One of the vendors being abroad, the convces will, as regards him, be exted by atty, & every pchaser shl be satisfied with such exon, & shl assume that the power of atty is valid & subsistg, witht requirg any evidence that such vendor is alive or orwise. The power of attorney has been filed at the Central Office.

As to separate conveyances.

2. The ppty [Any two or more lots bought by the same pchaser] shl be assured to the pchaser or his nominees in such pcels & by such convce or convces as the pchaser shl think fit, but any addonal costs occasioned to the vendors by more than one deed of convce being required shl be pd by the pchaser.

Expenses. Stringent (*g*).

3. With the exception of the expse of makg & deliverg the abstract, (*f*) all expses whatsr (whether occasioned to the vendors or the pchaser) of & incidental to the verificon or complon of the abstract, or the investigon or proof of the title, or the preparon, perusal, exon, & complon of the convce, & any other deeds, & all other costs & charges relatg to the sale (*h*), shl be borne & pd by the pchaser.

(*e*) As to execution by attorney, see L. P. Act, 1925, ss. 123–129, and *ante*, p. 202. See also Sup. Ct. of Jud. Act, 1925, s. 219. Unless the power of attorney relates to one transaction only and is to be handed over to the purchaser it must be filed at the Central Office. But if it relates to registered land only it or a certified copy must be filed at the Land Registry. If to both, then the original must be filed at the Central Office and an office copy must be filed at the Land Registry; *ibid.* s. 125.

(*f*) See *Re Adams & Frost*, [1907] 1 Ch. 695.

(*g*) See another stringent form, *post*, p. 397, note (*a*). These stringent forms will not enable the vendor to throw on the purchaser the expense of obtaining a vesting order or of the appointment of trustees or of a conveyance or trust for sale or of a vesting instrument under the Settled Land Act, 1925, or of tracing or getting in an outstanding legal estate: L. P. Act, 1925, s. 42.

(*h*) See *ante*, p. 238.

4. The pchaser shl be entitled to posson on signg the sub-joined agrmt & paying the deposit & all outgoings, & shl pay intt at £— p.c. p.a. on the unpaid balance of the pchase-moy from the day of sale up to the day fixed for complon whether he actually takes posson or not, & if from any cause, other than the wilful default of the vendor, the pchase is not then completed, the pchaser shl pay intt at £— p.c. p.a. on such balance from that day until complon. The pchaser in posson under this condon prior to complon shl not be entitled to make any alteron in the ppty witht the vendor's consent, & such posson shl not be deemed an acceptce of the title. In the event of the sale being annulled the pchaser shl redeliver posson & pay intt as afsd & make good dilapidons arisg durg his occupon, reasble wear excepted, witht makg any claim against the vendor in respt of his expenditure on the ppty. Option to purchaser to take immediate possession(*i*).

5. The ppty shl be at the risk of the pchaser as to loss or damage by fire, accident or orwise, arising after the sale (*b*); but subjt to the consent of the insce office & paymt by the pchaser on complon of a proportionate pt of the premium for the unexpired term of the existing poly, the vendor will hold such poly in trust for the pchaser, but the vendor shl not be bound to keep up or renew the insce of the ppty. Insurance against fire (*a*).

6. If any pchaser shl within seven days after the sale Provision

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(*i*) See *post*, p. 393, note (*c*).

(*a*) This condition merely gives the purchaser the same rights as he would have in the absence of stipulation: L. P. Act, 1925, s. 47. The question of fire insurance as between vendor and purchaser and the insurance office is fully discussed in 54 Sol. J. 357, where the cases are collected. As the interest of the vendor in the insurance moneys under a policy owned by him cannot be assigned without the consent of the office; *Saddlers Co.* v. *Badcock*, 2 Atk. 554; *London Investment Co.* v. *Montefiore*, 9 L. T. 688; *Phoenix Assurance Co.* v. *Spooner*, [1905] 2 K. B. 753; and the purchaser in the event of a fire pending completion is not entitled as against the vendor to the benefit of the insurance; *Rayner* v. *Preston*, 18 Ch. D. 1; the purchaser should, unless the office consents to the existing policy being held as mentioned in the condition, effect a temporary nsurance protecting him pending completion of the purchase. For this purpose a cover note may be obtained at a small premium at most offices: see 46 Sol. J. p. 150.

(*b*) During the interval pending completion of the purchase, the vendor as trustee for the purchaser is bound to use reasonable care to preserve the property in a reasonable state of preservation: *Clarke* v. *Ramuz*, [1891] 2 Q. B. 456; and see *post*, p. 393, note (*c*).

for advance of part of purchase-money on mortgage (*c*).

give to the vendors' solors notice in writg of his desire to borrow any portion of the pchase-moy, the vendors will lend or procure to be lent to the pchaser the amt specified in such notice not exceedg £—— p.c. of the pchase-moy at intt at £— p.c. p.a.: [the pchaser havg the option of paying off the loan or any pt throf not being less than £—— in any one paymt at any time within —— yrs of the date fixed for complon, condonally on the punctual paymt of intt] such loan & intt to be secd by mtge of the pchaser's lot or lots in the usual mner at the expse of the pchaser, such expse not to exceed £—— for each lot exclusive of stamp duty & of the charges (if any) of the pchaser's own solor, such mtge to contain provons for the continuce of the loan, at the option of the pchaser, for —— yrs from the date fixed for complon condonally on the punctual paymt of the intt, & the form of such mtge (if the pties differ) to be settled by counsel to be nominated by the vendor *or* "by the President for the time being of the Law Society," but this agrmt to advance moy is condonal upon the pchase & mtge being completed within the time appted for complon (*d*)

Provision for payment by instalments (*e*).

7. EACH pchaser, unless he avails himself of the option given by this condon of paying by instalmts, shl pay the balance of his pchase-moy to the vendor or as he shl direct on the —— day of —— at the office, &c., *continue* f. **3**, p. 246. If from any cause, &c., *continue provision for interest in case of default as in* f. **4**, p. 248. Upon paymt of the balance of the pchase-moy & intt (if any) as afsd, or upon signg the agrmt for paymt by instalmts as provd by this condon (as the case may be), the pchaser shl be entitled to posson or to the rect of the rents & profits as from the sd —— day of ——, down to which time all out-

(*c*) Compare the form, *post*, p. 391, note (*d*). As to the method of carrying the agreement out in districts where registration is compulsory, see Rules 72, 73. The contract is specifically enforceable notwithstanding the provision for leaving part of the purchase-money on mortgage: *Starkey* v. *Barton*, [1909] 1 Ch. 284. As to the priority of the mortgage, see *Wilson* v. *Kelland*, [1910] 2 Ch. 306.

(*d*) For registered land, see *ante*, p. 322.

(*e*) Compare the form, *post*, p. 392, note. A provision for forfeiture of past instalments in case of default in punctual payment of any later instalment is in the nature of a penalty from which the purchaser is entitled to be relieved: *Kilmer* v. *British Columbia, &c., Ltd.*, [1913] A. C. 319; *Steedman* v. *Drinkle*, [1916] 1 A. C. 275.

goings shl be pd by the vendor. Each pchaser shl have the option of paying the balance of his pchase-moy by equal half yrly instalmts extendg over a period of —— yrs from the day of sale, with intt at the rate of, &c., on the amt for the time being remaing unpaid, provd he shl within seven days from the day of sale deliver to the vendor's solors notice in writg of his desire so to do, togr with a print of the subjoined agrmt (*a*) in that behalf, duly signed by him, with the parlars & these

(*a*) *Form of Agreement annexed.* Form of agreement.

"An agrmt made the —— day of —— betn the above-named A., *vendor* (hrinar called the vendor), of the one pt, & B., of, &c. (hrinar called the pchaser), of the other pt, whby it is agrd as follows :—

"**1.** The pchaser havg pchased lot —— in the annexed parlars & havg pd one-tenth of the pchase-moy, shl be permitted to pay & hby agrees with the vendor to pay the balance of his pchase-moy by nine yrly instalmts of £—— each, with intt at the rate of £— p.c. p.a. to be pd at the same time on the amt remaing due immedly bfe paymt of each instalmt, & the first instalmt, with intt as afsd, to be pd on the —— day of —— & another instalmt on the same day in each of the succeedg eight yrs, or earlier at the option of the pchaser.

"**2.** When the whole of the balance with intt & costs (if any) as hrinar provd for shl have been pd the pchaser shl be entitled to his convce, & if bfe the convce shl have been executed the pchaser shd die or any other event shd happen tending to occasion further costs or expses than would be orwise incurred, the pchaser, or the psons derivg title under him, shl pay all such costs & expses, & the convce is not to be exted until they are pd.

"**3.** The pchaser shl not until he has received his convce dig or remove from the lot or lots pchased by him any gravel, clay, brick, chalk, stone, or other substance witht the consent in writing of the vendor, nor shl the land be orwise disturbed except in the ordinary course of cultivon or for bldg ppses.

"As WITNESS the hands of the pties."

Where the land is registered, the purchaser can protect himself by lodging a caution : L. R. Act, 1924, s. 54. A similar precaution in the case of non-registered land may be taken under s. 53 ; but in that case the only effect of the caution would be to prevent registration not to prevent dealings generally.

condons annexed, but the pchaser shl have the option at any time of payg off the balance remaing due of his pchase-moy with intt to the day of paymt witht any previous notice of his intention so to do. Upon paymt of the balance of his pchase-moy (whether in a gross sum or by instalmts) with intt (if any) each pchaser shl be entitled to a convce, & *continue as in* f. **13**, p. 254. If any pchaser shl make default in paymt of the balance of his pchase-moy or any instalmt throf (*b*), as provd by these condons or the agrmt to be signed by him under condon —— (as the case may be), & shl not in all other respts pform these condons & such agrmt (if any), the vendor shl be at liberty, &c., *usual provon for default as in* f. **23**, p. 263.

Party walls (*c*).

8. EVERY wall or fence betn any two lots or betn any lot & any other ppty of the vendor shl be deemed to be a party wall to be maintained & repaired at the joint expse of the respective owners for the time being of the ppties separated thby.

Provision as to roads and footpaths where the sites are included in the conveyances (*d*).

9. THE sale & convce of each lot will include the moiety abuttg thron of the site of the proposed road & footpath frontg the same, togr with the right to use, in common with all other psons having a right to do so, the roads or intd roads & footpaths delineated on the plan in the courses there shown, but witht any right on the pt of the pchaser to require the production of or make any objection or requon in respt of the title to any

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(*b*) See *Cornwall* v. *Henson*, [1900] 2 Ch. 298; and cf. *Kilmer* v. *British Columbia, &c. Ltd.*, [1913] A. C. 319, and cf. *Steedman* v. *Drinkle*, [1916] A. C. 275.

Party wall.

(*c*) As to the effect of an arrangement that a wall shall be a party wall, see L. P. Act, 1925, s. 38 (1); and cf. the building stipulation, *post*, p. 365, providing for the cost of building a party wall. See also *Sack* v. *Jones*, [1925] 1 Ch. 235.

As to the right of the "building owner" to repair under the provisions of the London Building Act, 1894, see *Barry* v. *Minturn*, [1913] A. C. 584. A "building owner" cannot by transferring his premises escape from liabilities already incurred by him under the Act: *Selby* v. *Whitbread & Co.*, [1917] 1 K. B. 736.

Sites of streets, &c., excluded from sale.

(*d*) In order to secure to the vendors the full control and proprietary rights over the roads, it is sometimes better to exclude them from the sale, as in the following form:—"The sites of the streets or roads or intd streets or roads, as shown on the sale plan are not included in the sale, but are to remain vested in the vendors, subjt to the necy rights of way & drainage over or through the same, & the sewers to be made thrunder wch are to be secd to the pchasers, & the convces shl be framed accdly."

of the sd roads or projected roads, except the pt comprised in his lot, & each convce shl be made subjt to an exception or reservon of a right of way for the vendors & other psons at all times & for all pposes to the other ppty now offered for sale & adjoing any pt of such roads or intd roads & footpaths resply, & of the rights necy for making & completg the sd roads & footpaths or incidental thto, & of the right of makg sewers, laying water-pipes, gas-pipes, & subterranean conductors of electricity, & orwise using such roads & footpaths in the mner & for the pposes in & for wch public roads or ways in towns are commonly used; & each pchaser shl, in his convce, covt with the vendors, within —— calr months, at his own expse, & with pper materials, & in a pper mner, & to the satisfon of the vendors' surveyor, to make & form into a road & footway, fit for traffic, such pt of his lot as is shown in the sd plan as pt of a projected road, & until such road & footway shl be adopted by the District Council (*a*), or other local authority, to keep in repair & maintain, fit for the traffic usually passg over the same, the portion throf included in his convce, or to contribute a due proportion, accdg to his frontage, of the cost (*b*) of the repairs & maintce throf, but the vendors will not enter into any covts or agrmts with the respective pchasers as to the sd roads or intd roads & footpaths, & shl not be bound to enforce or effectuate the above condons or the liabilities mentd thrin further or orwise, than by compellg every such convce to be made subjt as afsd & the vendors shl be entitled to a duplicate of each convce to be prepared & executed by & at the expse of the pchaser.

Disputes to be referred to auctioneer.

10. Any dispute or difference arisg either betn any pchaser & the vendors, or betn any of the pchasers, on any matter arisg out of the parlars or plans, *or* "as to the boundaries betn any lots" shl be determined by the auctioneer, who shl also decide how the costs of such reference shl be borne, & his decision shl be bindg on all pties.

Statements of fact in particulars and conditions (*c*).

11. The statemts of fact made by the vendors in the parlars & these condons are believed by them to be correct, but they shl not be required to adduce any proof throf beyond what is in their posson.

(*a*) See *post*, p. 368, note (*b*); and p. 622, note (*i*).
(*b*) See *Moore* v. *Todd*, 68 J. P. 43; *Scott* v. *Brown*, 68 J. P. 181.
(*c*) As to this, see Dart, 7th ed., 166.

Incorporation of common conditions of provincial Law Society (*d*).

12. The sale is subjt to the common form condons of the —— Law Society, but so that in case of variance or inconsistency these special condons shl prevail.

General form of conveyance: the sale being subject to restrictions (*e*).

13. To show distinctly to intendg pchasers the nature of the covts & clauses wch the vendors will require to be inserted in the sevl convces, a genl form of convce has been prepared, & may be inspected at the office of the vendors' solor for —— days previously to, & will be produced at the sale, & every pchaser shl be deemed to have full notice of all the clauses & provons of such form, & to have consented thto, & shl take his convce in accordce thwith, with such modificons (if any) as the special circes of his lot or lots may render necy: And any pchaser may, upon applicon to the vendors' solor, have a copy of the sd form on paymt of —— shillings for the same.

General deed of covenant (*a*).

14. Each pchaser shl, simultaneously with the exon of his convce, execute a genl deed of covt, to be prepared by the vendors' solors & retained by them (notice of wch shl be endorsed on the convce), contg covts on the pt of the pchaser, framed so as to bind his repves & assns, for securg the observce & pformance by him & them & the owners, lessees, & occupiers for the time being of his lot, of the afsd restrons & condons: but the vendors shall not be bound to procure the concurrce of all the pchasers in such genl deed, & the complon of the pchase of any lot shl not be delayed by reason of the non-sale or any delay in the complon of the sale of any lot.

Priority notice of unregistered land in a compulsory district (*b*).

15. The vendors hby consent to the pchaser or his solor lodgg in the Land Registry as soon as the title is accepted a notice reservg priority for the applon to be made by the pchaser to be registered under the L. R. Act, 1925, as proptor of the ppty [lot pchased by him.]

(*d*) See *Pickles* v. *Sutcliffe*, [1902] W. N. 200; Dart, 7th ed., 136.

(*e*) A stipulation that the conveyance to or the registration of the title of the purchaser shall be carried out at the purchaser's expense by the vendor's solicitor is void; so, too, any stipulation which might restrict a purchaser in the selection of a solicitor: L. P. Act, 1925, s. 48. It is not clear whether the words "which might restrict" include the case of the offer of a free conveyance, but until it is so decided it is safer not to assume that such an offer, if accepted by the purchaser, would bind him. The form above is permitted by the proviso to s. 48.

(*a*) For general deed of covenant executed in pursuance of this condition see *post*, p. 630.

(*b*) See Rule 95.

16. The vendors shall if required by any purchaser, execute & deliver to him a caveat in his favour under the Yorkshire Registries Acts, 1884 & 1885, to be prepared by & at the expense of such purchaser, & to be settled & executed by the vendors at their own expense." Caveat as to land in Yorkshire (*c*).

VII.

Incumbrances (*a*).

1. It shl be assumed that all legacies bequed by a testor who died —— yrs or upwards bfe the sale, have been pd; & that two annuities of £—— & £——, bequed by a testor, who died in the yr ——, have ceased by the deaths of the annuitants or have been released, & that all arrears throf have been pd, *or*, " that all legacies & annies bequed by any testor, who died 20 yrs & upwards bfe the sale, have been duly pd & satisfied or ceased, & that there is no outstandg charge or claim in respt throf." Payment of legacies and annuities.

2. An anny of £—— was by will charged on the land in favour of a pson who appears from the recital of a deed of covt for paymt of & indemnity against such anny, dated, &c., to have been then aged ——. The pchaser shl not object to complete on the ground of any delay caused by the fact that this annuity creates a settlmt and that a vesting deed will have to be executed and that trees of the settlmt may have to be appointed (*b*). Annuity.

3. Pt of the ppty sold is with other ppty subjt to a life Indemnity

(*c*) If preferred the condition might be " The vendors will facilitate the registration by the purchaser at the —— Registry of a memorial of the contract for sale." See s. 10 (6) of the Land Charges Act, 1925, a section difficult to reconcile with s. 11 of the L. P. Act, 1925, enacting that registration in the local registries of equitable interests shall not affect priorities.

(*a*) See *Hopkinson* v. *Chamberlain*, [1908] 1 Ch. 853. As to rent charges, see *post*, pp. 379, *et seq.* This part of the book in former editions also dealt with outstanding legal estates; but conditions precluding the purchaser from objecting on account of an outstanding legal estate are now void (s. 42 (3) of the L. P. Act, 1925) and are therefore omitted here.

(*b*) The effect of s. 1 (1) (v) of the S. L. Act, 1925, is to make the land settled land. The L. P. Act, 1925, s. 42, prevents the vendor from forcing the purchaser to accept a title which will only give him an equitable interest where such interest could subsist as a legal estate.

against life annuity (granted for value) by investment of fund (*c*).

anny of £—— created for value in money's worth. The vendors will endeavour to obtain a release from the annuitant; but shd they be unable to do so (of wch inability the statemt of their solor shl be sufft evidence), the pchaser shl be satisfied with the investmt of a portion of the pchase-moy in the pchase in the names of two trees (one to be appted by each party) of a governmt anny of like amt, or of governmt stk, the dividends whrof will suffice to answer the sd anny, upon trusts for securg the paymt of the sd anny & subjt thto for the vendors, such trusts to be declared by a deed to be prepared by & at the expse of the vendors, the pchaser bearg the expse of the approval & exon throf on his pt.

Satisfaction of old mortgage (*d*).

4. With the title deeds of lot —— is a mtge for £——, dated, &c., of the satisfon of wch the vendors have no evidence beyond their posson of the mtge deed, but the convce to their testor contains an indemnity against such mtge. The pchaser of this lot shl assume that the mtge has long since been satisfied, & shl not make any objection or requon on acct of the absence of a reconvce or rect for the mtge moy.

Lease not formally surrendered.

5. The vendors have no evidence that a lease of the ppty, wch was granted in 18— for the term of —— yrs from ——, was formally surrendered prior to the grantg in 18— by the predecessors in title of the vendors of a fresh lease throf to anor pson, under wch posson has since been held. The pchaser shl assume that such former lease was duly surrendered, & shl not make any objection or requon in respt throf.

Restric-

6. Lots —— are subjt to certain covts & restrictions as to

(*c*) See now the Law of Property Act, 1925, s. 50, re-enacting the C. Act, 1881, s. 5, as amended by C. Act, 1911, s. 1 (the machinery of which, however, would often be too expensive). The annuity in this case, not being created voluntarily or by marriage settlement or by way of family arrangement, does not make the land settled land. In some cases the vendor might prefer to sell free from the annuity by means of a disposition in trust for sale under L. P. Act, 1925, s. 2 (2).

(*d*) Where prior to 1926 a mortgagor was in possession, and the mortgagee had been paid off but had made no reconveyance: *Sands to Thompson*, 22 Ch. D. 614; or received no principal or interest: *Kibble* v. *Fairthorne*, [1895] 1 Ch. 219; *Re Hazeldine*, [1908] 1 Ch. 34; *Re Fox*, [1913] 2 Ch. 75; and no acknowledgment had been made to him for the statutory period of 12 years: R. P. Lim. Act, 1833, ss. 7 and 34; R. P. Lim. Act, 1874, s. 1, the legal estate vested in the mortgagor. In similar circumstances the mortgage term would now merge in the freehold reversion.

bldg, drainage, roads, carryg on trades & other matters contd in a convce in 18— [to the vendor] a copy whrof can be seen at the office of the vendor's solor. The respective pchasers (whether availing themselves of such opportunity of inspection or not) shl be deemed to have full notice of the contents of the sd convce & of the nature & effect of the sd covts & restrons & shl covt to observe such covts & restrictions [except so far as the same have been released or waived], & to indemnify the vendor in respt of any psonal liability to wch he may be subjt in respt throf & no proof shl be required that the same have been observed, *or*, "no objection shl be made on acct of any of such covts & restrictions not havg been observed." [Each pchaser shl assume that the pson purportg to waive or release any covt or restriction had power to waive or release the same (*f*).] tive covenants (*e*).

7. The ppty is subjt to the reservons of mines & minerals contd or referred to in the sevl documts formg the stipulated commencemts of title [& to certain other reservons & liabilities contd in or imposed by an award dated, &c., made pursuant to an Enclosure Act (*h*)]. Copies of such documts [& award] will be produced, &c., *continue as in* f. **5**, p. 249, *mutatis mutandis*. Reservations of minerals, &c. (*g*).

8. The ppty is subjt to certain rights of light & drainage, *or as the case may be*, implied in favour of the owners of adjoining ppty under convces on sale throf by [a predecessor in title of] the vendor dated in the yr ——; & the convce of the ppty to the pchaser shl be expressed to be made subjt to such rights. Copies of the convces referred to will be produced, &c., *continue as in* f. **5**, p. 249, *mutatis mutandis*. Easements arising out of unity of ownership (*i*).

9. By deed dated, &c., lot 1 & portions of lots 2 & 3 were Mortgage

(*e*) The existence of restrictive covenants should be specially notified; see *ante*, p. 250, and as to restrictive covenants generally, see *post*, pp. 355 *et seq*. As to the liability of the purchaser in the absence of special stipulation to give a covenant of indemnity, see *Re Poole & Clarke*, [1904] 2 Ch. 173; *Re Cowper* v. *Crondace* (1904), 90 L. T. 258. Restrictive covenants to be specifically notified.

(*f*) See *Hone* v. *Gakstatter*, 53 Sol. J. 286.

(*g*) As to the importance of stating that minerals are reserved, see *Re Jackson & Haden*, [1906] 1 Ch. 412. For forms of condition for reservations to be made to the vendor, see *post*, pp. 349 *et seq*.

(*h*) See *Hayles* v. *Pease & Partners, Ltd.*, [1899] 1 Ch. 567.

(*i*) See *ante*, p. 250.

to two persons, without joint account clause (*k*).

mtged to two psons for securg £—— & intt, witht any statemt that the moy belonged to them on a joint acct. After the death of one of the mtgees, the survor by deed dated, &c., transferred the mtge to anor pson, & the psonal repves of the deced mtgee did not concur in such transfer. No objection or requon shl be made on this acct.

Transfer of mortgage by married woman by deed unacknowledged (*a*).

10. By deed dated, &c., the ppty was mtged to two psons, —— & —— to secure £—— & intt advanced to them on a joint acct. In 18— the sd —— intermarried with ——, & by deed dated, &c., & exted by the sd —— durg the continuce of the coverture but witht any acknowemt by her, & witht the concurrence of her husband, the mtge was transferred to anor pson. No objection or requon shl be made on this acct.

Conveyance of infants' property.

11. On the pchase by the psnt vendor three of the psons then entitled were infants. Their shares of the pchase-moy (amtg to a comparatively small sum) were pd to a tree, who by deed poll undertook to hold the same in trust for the infants on their executing the convce, but in case of default then in trust for the psnt vendor. The convce contns a covt for the exon throf by the infants on their attaing the age of 21 yrs. One of the infants has since attned that age & has exted the convce & received his share of the pchase-moy. The pchaser shl stand in the same position as the vendor with respect to the two other shares, & shl be satisfied in all respts with the above arrangemt, & take the ppty subjt thto (*b*).

Release of incum-

12. No pchaser shl require any incumbce to be discharged orwise than by the incumbcer joing in his convce, nor make

(*k*) The protection given to a purchaser by the L. P. Act, 1925, s. 113, though it applies to mortgages made before the Act, does not apply to dealings effected (*i.e.* with a mortgagee) before the Act. It does not apply to a dealing after the Act by a person who before the Act dealt with a mortgagee.

(*a*) This condition will not be required except where the conveyance by the married woman is dated before 1908, see the L. P. Act, 1925, s. 170 (4). Acknowledgments by married women in deeds executed after 1925 are now unnecessary: s. 167.

(*b*) The defect in title covered by this condition is made more easily removable by the provisions of the L. P. Act, 1925, Sched. I., Part III., but the vendor might be caused considerable expense if he attempted to get the title put straight.

any claim for costs by reason of the convce being thby increased in length or made complicated. brances (*c*).

VIII.

Missing Deeds, Secondary Evidence (*d*).

1. Certain deeds dated, &c. (comprisg other ppty besides the ppty now offered for sale), are not in the vendors' posson, & they have no covt for their production. The pson in whose posson such deeds now are will produce them for examinon with the abstract, & the pchaser may have attested copies at his own expse, but he shl not objec' on acct of the absence of or require any covt or acknowemt for the production of such deeds. Want of covenant to produce (*e*).

2. In any case in wch any abstracted documt contains any notice of any deed or other documt not abstracted, the pchaser shl accept as conclusive the statemt of the vendors' solor, that the same does not relate to the lot or lots pchased by him; but nevertheless the vendors will, if required, endeavour to procure the production of any such deed or documt for the satisfon of the pchaser at his expse. Deeds not relating to title (*f*).

3. A transfer of mtge, dated in ——, is believed to have been lost many yrs ago, & the vendors have no copy or abstract throf, but the same is recited in a convce dated, &c. No objection or requon shl be made in respt of the loss or non-prodon of such transfer, & the recital throf contd in the sd convce shl be accepted as conclusive evidence of the contents & due exon throf. Lost deed. Recital evidence.

4. The pchaser shl not require an abstract or the production The same.

(*c*) If the incumbrance is registered as a land charge the purchaser may at his option require the registration to be cancelled: L. P. Act, 1925, s. 43. The condition will not apply to an equitable interest which can be overreached by resort to s. 2 (2) of the L. P. Act, 1925. See s. 42 of that Act. General form (*g*).

(*d*) Where documents are lost, secondary evidence as to contents, title and stamp, is admissible: *Re Halifax, &c., Banking Co. & Wood*, 79 L. T. 536; *Halkett* v. *Earl of Dudley*, [1907] 1 Ch. at p. 604; and see Williams, V. & P., 3rd ed., 150.

(*e*) See L. P. Act, 1925, s. 45 (7); *ante*, p. 238.

(*f*) See *Jones* v. *Smith*, 1 Ph. 244; Dart, 7th ed., 878.

(*g*) See also *ante*, p. 252, f. 8.

of any deed or instrumt not in the posson of the vendors, wch is recited or noticed in any abstracted deed, will, or other origl documt, dated —— yrs or upwards prior to the sale, or require any further informon relative thto than appears from the abstract.

Lost land certificate.

5. The pchaser shl assume that the vendor's land [charge] certfe has been lost on the evidence afforded by a statutory declaron to be made by the vendor & his solicitor, the draft of wch will be produced at the sale & shown to any intendg pchaser at the office of the vendor's solor within one week before the sale. The vendor shl at the request & cost of the pchaser requirg the same apply or concur in applyg for a new land [charge] certfe & furnish such evidce & execute & do all such instrumts & things as shl be in his power & shl be necy to enable a new certfe to be grted.

Attested copy to be evidence.

6. A mtge, dated in the yr ——, was upon a pchase in the yr —— covted (*h*) to be produced by the pson in whose posson the same then was. The vendors, after much search & enquiry, have been unable to discover where this deed now is, but they have in their posson an attested copy throf purportg to have been examined with the origl deed in the yr ——, wch shl be accepted as sufft evidce of the contents & due exon of such mtge, witht production of the origl.

Copy of will proved in Colony.

7. The vendor has in his posson an attested copy of the will of ——, who died in the year —— in ——, & whose will was proved in the (*a*) Colony of ——, [*or*, "in the Dominion of ——," *or*, "in the Commonwealth of Australia"], but such will has not been proved in the United Kingdom. The pchaser shl accept such copy as conclusive evidence of the terms of the sd will & of the death of the testor.

As to deeds not forthcoming (*b*). Stringent.

8. The vendors shl not be required to produce or trace or show the custody of any deed or instrumt not in their posson, *or*, "No objection shl be made on acct of the inability of the vendors to trace or procure the production of, or the want of a covt for the production of any deeds or munimts not in their posson."

(*h*) As to the effect of the old covenants for production, see *post*, p. 513.

(*a*) See *ante*, p. 227, note.

(*b*) As to the obligation of a vendor in regard to documents which it is in fact impossible to produce, see *Halkett* v. *Earl of Dudley*, [1907] 1 Ch. at pp. 603, 604.

IX.

LAND-TAX *and other* OUTGOINGS, APPORTIONMENT (*c*).

Exemption from land-tax (*d*).

1. A CERTFE of the redmon of the land-tax, dated, &c., shl be accepted as sufft evidence of such redmon, witht proof of the identity of the lands in respt of wch the tax was redeemed.

The same.

Another form.

2. No evidence shl be required of the redmon of the land-tax except a certfe or declaron of the collector of land-tax, *or*, "the vendors' steward," to be made if required at the pchaser's expse, that the ppty is not now assessed to the land-tax, *or*, "that no land-tax is now" [*or*, "has for the last —— yrs been] pd in respt of the ppty."

Freedom from tithes.

3. THE production of an office copy of a declaron of merger (*e*) by a former owner of the tithe rent-charge shl be

(*c*) Exemption of registered land from land-tax, tithe rent-charge, &c., may be noted on the register: Rule 194.

(*d*) As to the meaning of "lands" in land redemption contracts under the Land Tax Redemption Act, 1802, see *Newton Chambers & Co.* v. *Hall*, [1907] 2 K. B. 446; and see *City of London Land Tax Commrs.* v. *C. L. Rly. Co.*, [1913] A. C. 364. Land tax "redeemed but not exonerated" within s. 123 of the Act is personal estate. As to charges in respect of redeemed land tax, see *post*, p. 738, note.

Merger of tithes.

(*e*) Under the law before the Tithe Act, 1836, impropriate tithes notwithstanding unity of ownership, remained distinct from the land, and could not be merged; and they did not pass by a conveyance or devise of the land, unless expressly mentioned: Shelford on Tithes, 292; 2 Dav. Prec., 4th ed., pt. 1, p. 627. The same is now the case as regards the commutation rent-charge, unless it is merged under the Acts: *Chapman* v. *Gatcombe*, 2 Bing. N. C. 516; Burton Compendium on R. P. 381. If, therefore, the tithes, or tithe rent-charge, though belonging to the vendor, are unmerged, the land is not accurately described as "tithe free," and the vendor may be bound to merge them at his own expense; but if there was unity of possession at the time of the Tithe Commutation, the land would probably be entered as tithe free. As to merger, see Dart, 7th ed., 396, note; Williams, V. & P., 3rd ed., 420, note; and as to the compulsory redemption and extinguishment of tithe rent-charge and the power of the Minister of Agriculture and Fisheries to charge the money payable for redemption upon the land, see Tithe Act, 1918, ss. 4 and 6. Information as to the procedure for merger or apportionment, can be obtained from the Ministry of Agriculture and Fisheries, Old Bailey, E.C.2. No stamp is charged on the statutory merger: see Tithe Act, 1837, s. 12.

Registration of tithes.

Impropriate tithes may be registered in the Land Registry; but tithes like other incorporeal hereditaments need not be registered even in a compulsory area: L. Reg. Act, 1925, s. 120 (1). S. 82 of the L. T. Act, 1875, is not expressly re-enacted by the L. Reg. Act, 1925, but tithes are covered by the definition of "land" in s. 3 of the Act.

taken as conclusive evidence that the ppty is tithe free; *or*, "No pchaser shl be entitled to any other proof of the ppty being tithe free than is afforded by the tithe apportionmt for the parish of ——, wch shl if required be examined by the respective pchasers at their own expse."

Exemption from land-tax and tithes.

4. No land-tax has ever been pd by or claimed against the vendors, & the tithe rent-charge has been charged by them on other ppty of ample value; & a declaron to this effect, to be made (if required) at the pchaser's expse, shall be accepted by each purchaser as sufficient evidence that his lot is free from land-tax & tithe rent-charge.

Quit rents, tithes, &c. Indemnity against.

5. No objection or requon shl be made, or compenson claimed in respt of any quit rent, tithe rent-charge, or other similar liability to wch any of the premes now sold may be subjt togr with other lands, but in respt whrof an indemnity has been given, or no paymt made for —— yrs or upwards; & the pchaser shl accept a statutory declaron as conclusive evidence of such indemnity or non-paymt.

Apportionment of land-tax, tithes, rents, &c. (*a*).

6. The pchaser shl in every case be satisfied with & accept as sufft the statemt in the parlars as to the amt of any land-tax, tithe rent-charge, land charge imposed on redemption of tithe rent-charge (*b*), quit rent, or apportioned pt throf, or other outgoing to which the ppty or lot or pt of a lot is now subjt, or is for the ppose of the psnt sale to be taken as subjt, & shl not make any objection on the ground of any land-tax, tithe rent-charge, land charge in lieu thereof or other outgoing, not being now, or not havg been on a former occasion, legally apportioned, or require the same to be apportioned, or any indemnity agst any pt throf wch ought to be borne by other

Redemption of rents.

(*a*) As to redemption after 1925 of rents (other than tithe rent-charges), see L. P. Act, 1925, s. 191. As to the redemption before 1926 of quit rents and perpetual rents (other than tithe rent-charge, or rents reserved on sales or on grants for building purposes), see the C. Act, 1881, s. 45; as to enfranchisement rent-charges, see the Copyhold Act, 1894, s. 8, and the L. P. Act, 1922, s. 139 (3); and as to extraordinary tithe rent-charges, see the Extraordinary Tithe Redemption Act, 1886, ss. 5 & 6, and the Act of 1897. As to the importance of ascertaining whether a rent is truly a quit rent, see *Weller* v. *Stone*, 33 W. R. 421; *Hodgson* v. *Hooper*, 3 El. & El. 149.

(*b*) See Tithe Act, 1918, s. 6.

ppty (*c*). As to any ppty or lot wch is sold free from land-tax or tithe rent-charge, the pchaser shl be satisfied with such evidence of its being so free as the vendors may be able to adduce, & shl not make any objection on acct of the tithe rent-charge on any lot sold as tithe free being unmerged. The respective pchasers shl also be satisfied with the arrangemts made by the parlars for the apportionmt of the rents payable by the tenants in the case of ppties held by one tenant being separated into one or more lots or pts of lots, & shl not require the consent of the tenants to such apportionmt, or require any legal apportionmt of the sd rents, or make any requon in respt throf. [A legal apportionmt of any land-tax, tithe rent-charge, land charge in lieu thereof or other outgoing, or of any rents payable by the tenants, shl, nevertheless, if desired by any pchaser, be effected by the vendors, as far as circes will admit, & at the expse in all respts of such pchaser, *or*, "at the joint expse of the pchasers concerned thrin," but the complon of the pchase shl not be thby delayed, & the vendors shl, in respt of any unsold lot, for the ppose of this condon stand in the place of the pchaser.]

Quit-rents, &c. (*d*).

7. The vendors shl not be called upon to furnish any evidence beyond that afforded by the munimts or documts in their posson as to what portions of the ppty [respective lots] are subjt to the quit rents, land tax, or other outgoings specified in the parlars.

Magistrates' order for execution of works (*e*).

8. If at any time after the sale & bfe the day fixed for complon, any order shl be made for the exon by the vendor of works upon any lot in accordce with the requiremts of the local authority in that behalf, the pchaser shl, on complon, repay to the vendor the amt expended by him in complying with such order, together with interest thereon at the rate of £——p.c. p.a. to be computed from the date of expenditure throf, & if any such order shl not have been complied with bfe complon,

(*c*) Where the property to be sold is, with other property not belonging to the vendor, subject to one tithe rent-charge, the purchaser cannot call upon the vendor to apportion at the vendor's expense even though the contract contains no provision as to apportionment: *Re Ebsworth & Tidy*, 42 Ch. D. 23; and see *ante*, p. 257, note (*b*).

(*d*) Cf. general condition, 18, *ante*, p. 256.

(*e*) See *ante*, p. 257, note.

the pchaser shl enter into a covt to idemnify the vendor in respt throf; but the vendor shl, upon receivg notice of any such order, inform the pchaser throf, & give him the option of complying thwith in lieu of the vendor, & shl not expend any moy for that ppose unless the pchaser shl refuse or neglect to comply thwith.

X.

Identity, Quantity, &c. (*f*).

Identity (*g*).

1. The pchaser shl not require any proof, beyond what is afforded by the munimts themselves, of the identity of the ppty with that described in any of the munimts [prior to a convce in the yr ——], or for distinguishg the portions held under the different titles; [but shl be entitled to a declaron to be made at his own expse that the pchased ppty has been held accordg to the title shown for —— yrs or upwards prior to the day of sale].

The same.

2. The vendors will, if required, but at the expse of the pchaser requirg the same, furnish or procure such evidce or informon as may be in their power, for the ppose of identifying any lot or pt of a lot as described in the parlars with the descriptions contd in the munimts, or of reconcilg or connectg the quantities or descriptions where the same differ; but no requon for any such ppose or orwise connected with the identificon of the pcels shl be persevered in by any pchaser, after the vendors or their solors shl have declared their inability to comply thwith; & the title to any lot or pt of a lot shl not be objected to in respt of any such defect of proof of identity or any failure to define the pts of the ppty held under different titles, but the pchaser shl in that case be entitled to a statutory declaron, to be made at his own expse, that the pchased ppty

(*f*) As to parcels on registration of title, see *ante*, p. 276, note (*e*).

(*g*) This condition amounts to a contract that the muniments show identity, and if they do not a good title is not shown: *Curling* v. *Austin*, 2 Dr. & Sm. 129.

has been held in conformity with the title as deduced for —— yrs or upwards prior to the day of sale.

Quantity.

3. The contents & dimensions of the ppty as stated in the parlars & plan havg been taken from an actual survey, are believed & shl be taken to be correct, although the same may differ from the results of other surveys, or from the contents mentd in some of the munimts *or*, "the quantities mentd in the [book of reference to the] ordnance map (*a*) for the sd parish of ——."

Identity and quantity.

4. No objection shl be taken on the ground that any of the old descriptions & measurements do not accord with the psnt state of the ppty, as shown in the parlars & plan.

Identity.

Various stipulations (*b*).

5. Various alterons havg taken place by the removal of fences, enclosures, change of names, & orwise, the vendors shl not be required to identify or connect any pt of the ppty sold with the descriptions contd in any of the abstracted munimts, nor to acct for any apparent variance as to quantity, abuttals, or orwise, nor to explain or reconcile any apparent diffces in the abstracted descriptions, nor to distinguish the former copyhd pt of any lot from the freehd pt throf, or the pts held under different titles.

XI.

Reservations (*c*).

Right of way.

1. The sale [of lot ——] is subjt to a right of way, road, or passage [of the width of —— feet] for all pposes, *or* "for foot passengers," *or*, "for the owners & occupiers of lot —— & their families & servants (*d*), & others, with or witht horses & other animals, carts, carriages, & other vehicles," *or*, "for the pposes for wch the same is now used," *or as the case may be*,

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(*a*) See *ante*, p. 260.

(*b*) Cf. the conditions in *Bird* v. *Fox*, 11 Hare at p. 48.

As to sales subject to reservations.

(*c*) As to the power of limited owners to sell subject to reservations, see S. L. Act, 1925, ss. 49 and 50. As to easements affecting registered land, see *ante*, p. 243.

(*d*) These words are merely illustrative and not restrictive of the classes of persons for whom the right of way is to be reserved: see *Hammond* v. *Prentice Bros. Ltd.*, [1920] 1 Ch. 201.

to be reserved or grted to the vendors, *or* " to the pchaser of lot —— if sold, or if not to the vendors " betn the points marked A & B on the plan, *or*, " to & from lot —— as shown in the sale plan," & the convce shl be framed accdly, [& in case of difference as to the mode of effectg such reservon or grt the same shl be settled by the vendors' counsel].

Sale of surface without mines (*a*).

2. The vendors reserve to themselves the mines, beds, & quarries of coal & ironstone, & other metals, stone, & minerals, within & under the whole of the ppty, with all necy or pper powers, rights, & easemts for searchg for, winng, workg, gettg, & carryg away the same whether by underground or surface workgs, [includg power to let down the surface whether built upon or not (*a*)], pper compenson being pd to the pchasers [for

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Right of surface owner to support.

(*a*) Upon a severance of minerals from the surface, whether by grant or reservation, a right of support for the land in its natural state becomes vested in the surface owner, unless a right to let down the surface is included either expressly or by necessary implication in the deed of severance: *Davis* v. *Treharne*, 6 App. Cas. 460; *Butterknowle Colliery Co., Ltd.* v. *Bishop Auckland, &c., Co., Ltd.*, [1906] A. C. 305, 309; *Beard* v. *Moira Colliery Co., Ltd.*, [1915] 1 Ch. 257; *Davies* v. *Powell Duffryn Steam Coal Co.*, [1917] 1 Ch. 488. Where it is common knowledge that the minerals cannot be worked commercially without causing subsidence, an express right to work the minerals necessarily implies a right to let down the surface: *Butterley Co., Ltd.* v. *New Hucknall Colliery, Co., Ltd.*, [1910] A. C. 381; *Jones* v. *Consolidated Anthracite Collieries Ltd.*, [1916] 1 K. B. 123; *Welldon* v. *Butterley Co.*, [1920] 1 Ch. 130; but where rightly or wrongly it has been assumed that a method of mining could be adopted from which no subsidence would result, an express right of working has been construed as a right of working without letting down the surface: *Love* v. *Bell*, 9 App. Cas. 286; *New Sharlston Collieries Co., Ltd.* v. *Earl of Westmorland*, [1904] 2 Ch. 443, n; *Butterknowle Colliery Co., Ltd.* v. *Bishop Auckland, &c., Co., Ltd., sup.* In *Welldon* v. *Butterley Co., sup.*, it was found as a fact that there was no method by which coal could be worked so as not to cause subsidence in any part of the country; but in *Consett Industrial and Provident Society Ltd.* v. *Consett Iron Co., Ltd.*, [1922] 2 Ch. 135, the conclusion was arrived at that it was commercially practicable to work the mines without letting down the surface.

As to the right to lateral support under the Railways C. C. Act and the Waterworks Clauses Act, see 23 L. Q. R. 282 (where the cases are collected) and *New Moss Colliery, Ltd.* v. *Manchester Corpn.*, [1908] A. C. 117; *Howley, &c., Co.* v. *L. & N. W. Rly. Co.*, [1913] A. C. 11. As to support by running silt, see *Jordeson* v. *Sutton, &c., Gas Co.*, [1899] 2 Ch. 217; by pitch, *Trinidad Asphalt Co.* v. *Ambard*, [1899] A. C. 594; by brine, *Salt Union, Ltd.* v. *Brunner, Mond & Co.*, [1906] 2 K. B. 822. As to compensation for successive subsidences arising from the same act, see *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Cas. 127, and for risk of future subsidence, *West Leigh Colliery Co., Ltd.* v. *Tunnicliffe and Hampson, Ltd.*,

all damage done by subsidence or otherwise to the surface or the bldgs thron, &] for the occupon of the surface in or about the exercise of such rights & powers (*b*) ; & subjt to the obligon on the pt of the vendors to restore the surface when the mines or minerals shl have been worked out, or permanently ceased to be worked, & the convces shl be framed accdly [& in case, &c., *as in last form*].

3. The coal & ironstone & other mines & minerals (except only marl, gravel, & sand wch can be got witht going under or passg through any seam or vein of coal or ironstone) are reserved out of the psnt sale, with full power for the vendors & all psons claimg under them to sink any pits or shafts, or to erect or construct any bldgs, engines, machy, roads, spoil banks, tramways, waterworks, waterways, airways, or other works or conveniences necy or desirable for the ppose of gettg, workg, carryg away, convertg, or disposg of such mines & minerals, or for any ppose connected thwith, & to stack & lay up any minerals & refuse wch may be raised out of any such mines, makg all reasble compenson to the surface owners & occupiers for the time being for such damage as may be done in the

The same.

Another form.

[1908] A. C. 27. As to the time when (see *Backhouse* v. *Bonomi*, 9 H. L. C. 503) and as to persons against whom (see *Greenwell* v. *Low Beechburn Coal Co.*, [1897] 2 Q. B. 165 ; *Hall* v. *Norfolk*, [1900] 2 Ch. 493 ; *Manley* v. *Burn*, [1916] 2 K. B. 121 ; and cf. *Att.-Gen.* v. *Roe*, [1915] 1 Ch. 235) an action for damages by subsidence can be brought. As to the meaning of mines and minerals, see *post, sub tit.* "Leases (Agricultural)"; and as to the right of the vendors under a reservation of mines to make underground roads generally, see *Batten Pooll* v. *Kennedy*, [1907] 1 Ch. 256. As to the difference between an exception and a reservation (not exclusive), and between a licence and a *profit à prendre*, see *Sutherland* v. *Heathcote*, [1892] 1 Ch. 475 ; Elph. Introd., 7th ed., 125 ; Goodeve R. P., 5th ed., 335.

Trustees and mortgagees.

Trustees for sale or with a power of sale may now sell the mines and surface separately without the leave of the court : Trustee Act, 1925, s. 12 (2). So, too, may a tenant for life selling under the S. L. Act ; see s. 50 of the S. L. Act, 1925. And trustees for sale (but not trustees with merely a power of sale, have by virtue of s. 28 (1) of the L. P. Act, 1925, all the powers of a tenant for life under the S. L. Act, 1925. A mortgagee, whose mortgage does not expressly authorise such a sale, must obtain the leave of the Court under s. 92 of the L. P. Act, 1925.

As to the power of personal representatives : see s. 33 of the L. P. Act, 1925, and *Re Chaplin, &c.* (1922), 2 Ch. 824 (correcting *Re Wicksted's tr.* (1921), 2 Ch. 184).

(*b*) The condition for compensation is enforceable against the assignees of the vendors, see *Aspden* v. *Seddon*, 1 Ex. D. 496 ; *Westhoughton Urban Council* v. *Wigan Coal & Iron Co.*, [1919] 1 Ch. 159, 168, 175.

course of gettg & workg such mines & minerals, & the convces shl be framed accdly [& in case, &c., *as in* f. **2**].

Right to get in crops.

4. The vendors reserve the right to gather in & sell the growg crops & fruits at any time bfe the pchaser is let into posson.

Right to use drains.

5. The vendor reserves the right to use for the drainage & sewerage of his adjoing ppty, & any future bldgs thron, all (if any) drains & sewers in or under the ppty sold & at psnt used for the ppses afsd with power for him, & his succors in title, owner or owners of such adjoing ppty or any pt or pts throf at any time or times hrafter to enter upon the premes sold for the ppose of repairing and cleansing the sd drains & sewers doing as little damage as possible to the ppty entered upon & restoring the surface of the soil witht unnecessary delay at his or their own costs & making compenson to the owners or occupiers of the ppty so entered upon for any temporary damage done thto in the exercise of this psnt power.

Provision for lot not being sold (*c*).

6. If any lot [either of lots —— to ——] shl not be sold at the psnt sale, the vendors & all persons claiming under them, shl, in respt of such unsold lot have the same easemts & rights over or against the sold lots *or specify the right to be reserved, e.g.* "the same right of surface drainage along, &c.," as would be acquired by a pchaser at the psnt sale [and the convces of the sold lots shl expressly reserve such right and shall, if so required by the vendors, be executed by the respve pchasers].

Exception of right to light, &c. (*d*).

7. No pchaser shl be entitled to any easement or right of light, air or otherwise wch wd restrict or interfere with the

(*c*) This condition is sometimes desirable on a sale in lots, having regard to *Wheeldon* v. *Burrows*, 12 Ch. D. 31: see Norton on Deeds, 271.

(*d*) See *Wheeldon* v. *Burrows*, 12 Ch. D. 31; *Russell* v. *Watts*, 10 App. Cas. 590; *Bayley* v. *G. W. Rly. Co.*, 26 Ch. D. 434; *Beddington* v. *Atlee*, 35 Ch. D. 317; *Aldin* v. *Latimer Clark & Co.*, [1894] 2 Ch. 437; *Broomfield* v. *Williams*, [1897] 1 Ch. 602; *Born* v. *Turner*, [1900] 2 Ch. 211; *Pollard* v. *Gare*, [1901] 1 Ch. 834; *Godwin* v. *Schweppes, Ltd.*, [1902] 1 Ch. 926; *Ray* v. *Hazeldine*, [1904] 2 Ch. 17; *Betis, Ltd.* v. *Pickfords, Ltd.*, [1906] 2 Ch. 87; and cases cited, *ante*, p. 59, n (*a*).

An exception of a right to light contained in the conveyance will not exclude the operation of s. 3 of the Prescription Act, 1832: *Mitchell* v. *Cantrill*, 37 Ch. D. 56; but a reservation to the vendor of an express power at any time to obstruct light will have that effect, *Haynes* v. *King*, [1893] 3 Ch. 439. Cf. the form of reservation, *post, sub tit.* "Exchanges." As to the right to light over land of a third party, see *Greenhalgh* v. *Brindley*, [1901] 2 Ch. 324; *Smith* v. *Colbourne*, [1914] 2 Ch. 533. See further as to the right to light, *ante*, p. 59, note.

free use of any adjoing or neighbourg lot for bldg or other pposes, & the convces shl expressly exclude the implicon of any such grant.

8. The convce to the pchaser shl contain a declaron that the access & user of light & air to & for the ppty [lot] pchased by him & to & for any dwelling-house, erection or bldg for the time being erected & standg thron, from & over the adjoing ppty [any other lot] of the vendor is enjoyed under the express consent of the vendor, & also a provon authorising the vendor & his successors in title, owners or occupiers of the adjoing ppty [lots] from time to time & at any time to interfere with or destroy the access of light & air to the ppty [lot] pchased by erecting new bldgs or altering or enlarging existing bldgs on such adjoing land witht any formal revocation of such consent. Right to alter buildings so as to obstruct light (*e*).

9. The convce to each pchaser shl expressly provide that he shl not be entitled to the benefit of the covts with the vendor contd in a convce on sale dated, &c., relatg to, &c. Exception of benefit of covenants.

10. Where a lot is sold subjt to or with the reservation of any right effect shl in case of difference be given thto in such mner & at the expse of such psons as Mr. ——, or failing him as some counsel to be nominated at the request of either party by the President of the Law Society, *or* "as one of the conveyancing counsel of the Court to be nominated by the vendor" may direct. Difference to be settled by counsel.

XII.

Imposition *of* Restrictive Covenants *and other* Stipulations *as to* Building *where the property is* not *sold as a* Building Estate (*a*). Forms *of* Restrictions *appended* (*b*).

1. The sevl lots *or* "Lots —— to —— inclusive" are offered for sale subject to the following stipulons & condons, namely:— Sale subject to stipulations.

(*e*) See last note.

(*a*) A precedent of conditions of sale of a building estate in lots subject to a common scheme the provisions of which each purchaser is under an implied obligation to every other purchaser to conform to is given *ante*, p. 270.

The forms of condition under the present heading are for use where no As to the framing

(*b*) See *post*, pp. 361 *et seq.*

The same by reference to Schedule.

2. The sevl lots *or* "Lots —— to —— inclusive" are offered for sale subjt to the stipulons & condons mentd in the

of conditions imposing restrictions where there is no building scheme.

building scheme is intended to be established, and the respective rights and obligations of the vendor and each purchaser and the persons claiming under them respectively will, after completion, depend entirely upon the express covenants contained in the conveyance of the lot purchased. It is the function of the particulars and conditions of sale to indicate clearly both the substance of the covenants to be entered into by each purchaser and in the case of negative covenants the manner in which, as regards burden and benefit, they are intended to operate. It is not, however, necessary nor is it advisable in the conditions themselves to attempt in technical terms to forecast the precise phraseology of the operative part of each covenant. As to the framing of covenants affecting land, see *post*, p. 772, *sub. tit.* Covenants, Formal Parts of.

Burden of affirmative covenants at law.

Subject to the question whether s. 79 of the L. of P. Act, 1925, has altered the law in this respect, it is now established that at law the burden of a covenant between vendor and purchaser as to the user, etc., of land, unless operating as a grant of an easement or rent or other estate in the land (as in *Rowbotham* v. *Wilson*, 8 H. L. Cas. 348), never runs with the land so as to effect a purchaser from the covenantor: *Austerberry* v. *Oldham Corpn.*, 29 Ch. D. 750, where the previous authorities were fully examined; 1 Smith's L. C. notes to *Spencer's Case*, 11th ed. p. 55. Such a covenant is nevertheless valid and binding for all time as against the covenantor personally, whether an individual or a corporation, and as against the estate of the covenantor after his death: see *Witham* v. *Vane*, Challis R. P. App. V.; *S. E. Rly. Co.* v. *Associated Portland Cement, Ltd.*, [1910] 1 Ch. 12. It is enforceable, so long as the covenantor retains the land to which the covenant relates, by an action for specific performance and sounds in damages after he has parted with the land. S. 79 (1) of the L. P. Act, 1925, enacts that a covenant (made after 1925) relating to any land of the covenantor or capable of being bound by him shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself his successors in title and the persons deriving title under him or them and subject as aforesaid shall have effect as if such successors and other persons were expressed, and the sub-section extends to a covenant to do some act relating to the land, notwithstanding that the subject matter may not be in existence when the covenant is made. It is submitted that this sub-section does not enable the covenantee to compel the assign of the covenantor to do an act, *e.g.* to build a house, which the covenantor covenanted to build on the land; but the sub-section is misleading.

Burden of restrictive covenants.

Restrictive covenants entered into after 1925 will not affect a purchaser of a legal estate for money or money's worth unless registered as land charges under the Land Charges Act, 1925, before the completion of the purchase: s. 13 (2). The registration should be in the register of land charges at the Land Registry, but in the case of land in Yorkshire restrictive covenants may be registered locally and such registration will have the same effect as registration under the Act: s. 10 (6); see further note (*c*), p. 358, *post*. Restrictive covenants entered into before 1926 are binding on a purchaser (including of course a lessee, *Holloway* v. *Hill*, [1902] 2 Ch. 612) taking with notice (*Tulk* v. *Moxhay*, 2 Ph. 77) otherwise than through a purchaser for value without notice: *Wilkes* v.

schdle hto [as affecting the same resply], *or* "subjt to such of the stipulons & condons specified in the schdle hto as are thrin expressed to apply to the same resply."

Variation where different stipulations affect various lots.

Spooner, [1911] 2 K. B. 473. A purchaser will not be affected with notice of a restrictive covenant which would only be discovered by investigating the title prior to the period of 30 years fixed by the L. P. Act of 1925, unless he actually investigates the title: s. 44 (8). But if a shorter title than 30 years is agreed on the purchaser has notice of equities appearing on the title for the period of 30 years: *Re Cox & Neve*, [1891] 2 Ch. 109. A squatter and persons claiming under him is bound by a restrictive covenant of which he has no notice: *Re Nisbet & Potts*, [1906] 1 Ch. 386. A negative covenant is not open to objection on the score of perpetuity (*L. & S. W. Rly. Co.* v. *Gomm*, 20 Ch. D. 562; *Mackenzie* v. *Childers*, 43 Ch. D. 265; and cf. *S. E. Rly.* v. *Associated, &c., Ltd.*, [1910] 1 Ch. 12; *Sharpe* v. *Durrant*, 55 Sol. J. 423), nor as being in restraint of trade, *Catt* v. *Tourle*, L. R. 4 Ch. 654; *Earl of Zetland* v. *Hislop*, 7 App. Cas. 427; Dart, 7th ed., 771. The obligation of the covenant is coincident with the interest which the covenantor has in the property in respect of which it is entered into: *Abbey* v. *Gutteres*, *sup.*, and see *Frost* v. *King Edward VII. Welsh, &c., Assocn.*, [1918] 2 Ch. 180.

A restrictive covenant, expressed to be for the benefit of land defined by the conveyance, is not binding on the assigns of the covenantor if at the date of the conveyance the covenantee had no interest in the land so defined: *Millbourn* v. *Lyons*, [1914] 2 Ch. 231; *London County Council* v. *Allen*, [1914] 3 K. B. 642; or if, subsequently, to the conveyance he has ceased to have any interest therein: *Chambers* v. *Randall*, [1923] 1 Ch. 149; *Kelly* v. *Barrett*, [1924] 2/L379,

Endorsing notice of restrictive covenants.

A purchaser may, notwithstanding any stipulation to the contrary, require notice of a restrictive covenant entered into by the vendor in the conveyance to the purchaser to be endorsed on one of the deeds common to his title and the vendor's title retained by the vendor: s. 200 of the L. P. Act, 1925, re-enacting s. 11 of the C. Act, 1911. He should also register a land charge, see note (*e*), p. 341, *ante*.

Benefit of affirmative covenants at law.

The question, whether at law the benefit of a covenant entered into with a landowner runs with the land so as to be enforceable by an assign of the land as such is often one of some difficulty. As between vendor and purchaser, and generally where privity of estate incident to the relation of landlord and tenant does not exist, two requisites must be fulfilled in order that the benefit of an affirmative covenant may run with the land. In the first place the covenant must be inherently capable of running with the land and not simply collateral, *i.e.* it must be a covenant for title or some other covenant affecting *per se* and not merely from collateral circumstances, the nature, quality or value of the land. See *Congleton Corpn.* v. *Pattison*, 10 East at p. 138; *Dyson* v. *Forster*, [1909] A. C. 98; and, secondly, the covenant must be entered into with the legal owner of the land to which it relates: *The Prior's Case*, Y. B. 42 Edw. 3, p. 3, cited Co. Litt. 385 a; *Spencer's Case*, 5 Co. Rep. at p. 16, *b*; Shep. Touch. 177; *Webb* v. *Russell*, 3 Term R. 393. These two conditions being fulfilled, any person subsequently in possession of the land through or under the original covenantee except possibly a lessee (see *Westhoughton Urban Council* v. *Wigan Coal & Iron Co.*, [1919] 1 Ch. 159

Conveyance to contain

3. The convce of each [of such] lot[s] shl contain full & pper covts, to be entered into by & at the expense of the

at pp. 171, 176) may sue upon the covenant: see Co. Litt. 385 b; *Taite* v. *Gosling*, 11 Ch. D. 273; *Hubbard* v. *Weldon*, 25 T. L. R. 356. Cf. *Roach* v. *Wadham*, 6 East, 289 (relating to the burden of the covenant at law) and note the distinction between a covenant annexed to the land as above described and a covenant entered into between landlord and tenant, which subsists so long only as the privity of estate established by the lease continues, and cannot be taken advantage of by any person who has not privity of estate: *South of England Dairies, Ltd.* v. *Baker*, [1906] 2 Ch. 631.

Benefit of restrictive covenants.

The benefit may be annexed to land of the covenantee.

A restrictive covenant being a covenant merely to refrain from using the land of the covenantor in a particular manner is not necessarily such as *per se* to affect the land of the covenantee. The benefit of a restrictive covenant which is capable of being annexed to land of the covenantee will in future, if entered into in relation to that land be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and will have effect as if such successors and other persons were expressed: L. P. Act, 1925, s. 78. In other words, it will become annexed to the land to which it relates, *i.e.* for the benefit and protection of which it is intended. No technical expressions are necessary to bring about this result (L. P. Act, 1925, s. 80 (3)), but in order that the benefit of a covenant may become annexed to so as to run with any particular land of the covenantee, that land must be clearly defined. Cf. *Renals* v. *Cowlishaw*, 9 Ch. D. 125; *Rogers* v. *Hosegood*, [1900] 2 Ch. 388; *Reid* v. *Bickerstaff*, *sup.* *Ives* v. *Brown*, [1919] 2 Ch. 314.

Effect of annexation.

If the benefit of the covenant has once been annexed, it will pass, without mention, on a subsequent conveyance as incident to the land to which it is annexed whether the purchaser knows of its existence or not: *Rogers* v. *Hosegood*, *sup.*; *Reid* v. *Bickerstaff*, *sup.*

The benefit though not annexed is generally capable of assignment.

A restrictive covenant capable of being annexed to land but not actually so annexed, though not passing by conveyance as incident to the land to which it is capable of being annexed, may be dealt with by the covenantee by assignment or otherwise as he pleases, and on the death of the covenantee, if not dealt with by his will, will pass to his legal personal representatives (*Ives* v. *Brown*, *sup.*; *Lord Northbourne* v. *Johnstone & Son*, [1922] 2 Ch. 309; but a covenant which in the circumstances of the case is incapable of being annexed to any land, as for instance a covenant entered into with vendor of land upon the sale of the whole of his land, is apparently merely collateral and personal to the vendor, and an action for injunction will not lie at the suit of the executor of the vendor against an assign of the purchaser after the vendor's death: *Formby* v. *Barker*, [1903] 2 Ch. 539; *London County Council* v. *Allen*, [1914] 3 K. B. 642; *Chambers* v. *Randall*, [1923] 1 Ch. 149.

Removal or modification of restrictive covenants.

By s. 84 of the L. P. Act, 1925, an official arbitrator appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, and selected by the Reference Committee under that Act, may on the application of any person interested in freehold land affected by a restrictive covenant, discharge or modify the restriction. It must be shown (*a*) that by reason of changes in the character of the property or neighbourhood or other circumstances, the restriction ought to be deemed

pchaser, & provons for securing the observce & pformce of such stipulons & condons *or* "the stipulons & condons mentd in the parlars relating to bldg & other matters" [including, as regards such of the same stipulons & condons as involve money paymts, a provon restricted as to perpetuities reserving

covenants and provisions for enforcement of stipulations.

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obsolete, or that it would impede the reasonable user of the land without securing practical benefits to other persons; or (*b*) the restriction has been waived; or (*c*) that the discharge or modification will not injure the persons entitled to the benefit of the restriction. By sub-s. (12) leaseholds for an original term of more than 70 years (except mining leases) are brought into the section as soon as 50 years of the term have expired. Sub-s. (2) gives the Court power to declare (1) what land is affected by the restriction or (2) the nature and extent of the restriction, and whether it is enforceable, and if so by whom. For Rules made under s. 84 (4), see W. N. [1926] s. 36.

Loss of benefit by acquiescence.

The benefit of a restrictive covenant may be lost by acquiescence on the part of the person seeking to enforce it: *Barret* v. *Blagrave*, 6 Ves. 104; *Hepworth* v. *Pickles*, [1900] 1 Ch. 108; but acquiescence in a breach of minor importance will not disentitle him from enforcing the observance of the covenant as regards other and more essential matters: *Richards* v. *Revit*, 7 Ch. D. 224; *Osborne* v. *Bradley*, [1903] 2 Ch. at pp. 456, 457.

Waiver.

Waiver of a restriction in favour of several covenantors does not necessarily preclude the covenantee from insisting on the restriction as against others. *Earl of Zetland* v. *Hislop*, 7 App. Cas. 427; *Pulleyne* v. *France*, 57 Sol. J. 173.

Assignee cannot sue on past breach.

A purchaser of land with the benefit of a restrictive covenant is not entitled to claim damages for a past breach of the covenant where the breach is not continuing, but a single breach complete before the assignment: *Powell* v. *Hemsley*, [1909] 2 Ch. 252.

As to restrictive covenants or conditions affecting copyholds on enfranchisement, see Copyhold Act, 1894, repealing, and by s. 13 re-enacting with modifications the Copyhold Act, 1887, s. 8. As to the validity of a perpetual power of re-entry on breach of such a covenant, see *post*, p. 378, note.

Limited owners and mortgagees.

A tenant for life or statutory owner is empowered by the Settled Land Act, 1925, s. 49 (1) (*b*), upon any sale or disposition under the powers of that Act, to impose restrictions with respect to building or user, to be made binding by covenant, condition, or otherwise, either on the land sold or the land retained; and, under s. 51, has power, apparently, to give an option to a purchaser of part of the settled land to purchase the release of any restriction so imposed. See, formerly, *Palmer* v. *Grand, &c., Waterworks Co.*, 86 L. T. 352. A mortgagee selling under a mortgage executed after December 31st, 1911, has similar powers: L. P. Act, 1925, s. 101 (2) (i).

Purchase under Lands C. Acts.

A purchaser taking land under the Lands C. Acts with notice of a restrictive covenant, is not bound by it, but on breaking it must compensate the covenantee: *Kirby* v. *School Board for Harrogate*, [1896] 1 Ch. 437; *Long Eaton, &c., Co.* v. *M. Rly. Co.*, [1902] 2 K. B. 574. On resale as superfluous land the covenant revives: *Bird* v. *Eggleton*, 29 Ch. D. 1012.

Sale

Power to dispose of land free from a restrictive covenant to which it

Provision restricting personal liability of purchaser.

Frame of negative covenants.

the same as rent, or orwise making the same a charge on the lot pchased (*a*)]. The covts & provons shl be so framed as not to impose any psonal liability on the pchaser for any breach of the sd stipulons & condons after he shl have parted with all intt in the lot in respt of wch such breach shl occur (*b*). Every negative covt shl be so framed as, on the one hand, to bind so far as possible the lot pchased into whosesr hands the same may come, &, on the other hand, to enure for the benefit of & be annexed to the ppty of the vendor known as —— (*c*). The sd negative covts shl be registered as land

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under D. O. R. Act, 1920.

was subject immediately before acquisition under the D. O. R. (Acquisition of Land) Act, 1916, and which has been lawfully contravened before the 4th of November, 1920, is conferred by the D. O. R. (Acquisition of Land) Act, 1920.

Local authorities.

A charge for the expenses of street improvements by a local authority under the Public Health Act, 1875, cannot be enforced by a sale of the premises charged free from restrictive covenants entered into by the owner as to building: *Guardians of Tendring Union* v. *Dowton*, [1891] 3 Ch. 265.

A municipal corporation cannot on sale of part of their land impose on other parts restrictive covenants which are not sanctioned by the Local Government Board: L. G. Act, 1888, s. 72, and see *Davis* v. *Leicester Corpn.*, [1894] 2 Ch. 208. As to purchases by local authorities, see *post*, p. 731.

(*a*) A power for the vendor specifically to perform affirmative conditions and to charge the cost of so doing upon the property in respect of which it is incurred is usually included among the scheduled stipulations: see *post*, p. 369. For other provisions for enforcing affirmative covenants, see *post*, p. 377.

As to restricting personal liability of purchaser.

(*b*) See *Williams* v. *Hathaway*, 6 Ch. D. 544; *Watling* v. *Lewis*, [1911] 1 Ch. 414. A liability to enter into unrestricted covenants (to which the vendor would be entitled in the absence of express stipulation: *Pollock* v. *Rabbits*, 21 Ch. D. 466) might be an obstacle in the way of trustees purchasing: and see *ante*, p. 275, note (*b*).

Negative covenants to be annexed as the vendor directs.

(*c*) It is assumed that the vendor has other property not included in the sale, to which the covenants of the respective purchasers may be annexed. Where the whole of the vendor's property is included in the sale, the covenants may be made "to enure for the benefit of & be annexed to the unsold lots at the psnt sale or such of the same (if any) as the vendor shl direct." Where, as in the above forms, no building scheme is established and the vendor desires to retain an absolutely free hand to modify or dispense with the observance of the covenants in respect of the lots sold, the better plan is to make no provision for annexing the covenants to any particular portion of the property remaining unsold. Otherwise, if a part only of the property to which the covenants were annexed should subsequently be sold, the vendor would be hampered in his control of the property by the right of the purchaser at such subsequent sale to enforce the covenants. In this case it may be

charges [*add, in case of land in Yorkshire* at the vendor's option either in the Land Registry or the —— Riding deeds registry (*d*).]

Another form.

4. As regards every lot in respt of wch stipulons or condons are by these condons or the parlars imposed on the pchaser in regard to the erection of bldgs, the making & maintaining of roads or fences, the user of the ppty, or orwise, the convce of such lot shl contain, &c., *as in preceding form.*

Short form. Unrestricted personal liability. Negative covenants not to be annexed by the conveyance (*a*).

5. The due pformce & observce of the obligons to wch the sale of each lot is made subjt as afsd, shl be secd to the vendor's reasble satisfon by pper covts to be entered into by the pchaser with the vendor, & other pper provons to be inserted in the convce, & as regards any moy paymts by reserving the same as rent or orwise making the same a charge on the lot. Every negative covt to be so framed as to be binding on & enforceable against the pchaser & his successors in title at the instance of the vendor & any pson claiming by assignmt the benefit of any such covt (*b*); but no pchaser at the psnt sale shl be entitled by virtue of this condon to have assigned to him the benefit of any such covt by any other pchaser whose lot shl have been previously conveyed.

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preferable to say "to enure for the benefit of any such lot or lots remaining unsold at the psnt sale [& any such pt of the adjoining ppty known as the —— Este belonging to the vendor] as may subsequently be sold with the benefit of such covts or to wch such covts may at any time be annexed," adding at the end of the form "but no pchaser shl be under any obligon to any other pchaser at the psnt sale in respt of such stipulons or condons." Cf. f. 5, *infra*, and see note (*c*), p. 360.

As to annexing the benefit of qualified covenants.

Another and sometimes convenient plan to adopt is to provide for the annexation of qualified covenants to a definite portion of the property, prohibiting the user of the sold lots in contravention of the stipulations otherwise than with the consent of the owner for the time being of the principal mansion house upon that portion of the property. Cf. *Everett* v. *Remington*, [1892] 3 Ch. 148, and see the form of restriction applicable in this case, *post*, p. 361, note (*a*).

(*d*) Registration of restrictive covenants in a Yorkshire registry is equivalent to registration in the Land Charges Department: see s. 10 (6) of the L. Ch. Act, 1925. This sub-section and s. 11 of the L. P. Act, 1925, may be reconciled by treating the former as an exception to the general law stated in the latter. But until the matter has been considered by the courts or s. 11 been amended, it is safer to register in the Land Registry.

(*a*) See also the variation in note (*c*) to form 3, *supra*.

(*b*) Covenants entered into after January 1st, 1925, will without express

Power to vendor to sell free from and release restrictions. Purchasers not to be bound *inter se* (*c*).

6. The vendor reserves the right to alter the lotting of the ppty & the position of roads, bldg lines & other matters, as shown in the sale plan; & to sell any lot free from the afsd stipulons & condons [contd in the schdle hto]; & to release any lot sold from such stipulons & condons or any of them; & no pchaser shl be under any obligon to any other pchaser at the psnt sale in respt of such stipulons & condons.

Duplicate conveyance.

7. The vendors shl be entitled to a duplicate of each convce to be prepared by & at the expense of the pchaser (*d*).

Negative covenants whether severable.

8. No applicon for the registron of a proptor or proptors of matters mentd or referred to in rule 18 of the L. Reg. Rules any lot or pt of a lot shl be made unless it contains a statemt

Applica-tion to

words bind the successors in title of the covenantor: s. 79 of L. P. Act, 1925. As all questions relating to the devolution of the benefit of restrictive covenants depend entirely upon equitable considerations (see *Keates* v. *Lyon*, L. R. 4 Ch. at p. 223), and as it is decided that covenants of this kind, if capable of being, though not actually, annexed to land of the vendor at the time they are entered into, are inserted for the benefit of the vendor to enable him to make the most of the property which he retains (*Renals* v. *Cowlishaw*, 9 Ch. D. at p. 130), it seems clear that the assignment on the occasion of a subsequent sale of part of thes retained property by the vendor of the benefit in common with the vendor and other persons entitled thereto of the covenants of previous purchasers will not preclude the vendor from enforcing those covenants for the advantage of the remainder of the property still retained by him; some interest which he originally had in maintaining the restrictions imposed by the covenants in that case continuing to exist: cf. *Earl of Zetland* v. *Hislop*, 7 App. Cas. 427; *Ives* v. *Brown*, [1919] 2 Ch. 314 at p. 323; *Lord Northbourne* v. *Johnstone & Son*, [1922] 2 Ch. 309.

Building scheme may be presumed in favour of purchaser.

(*c*) Cf. the condition, *ante*, p. 272, reserving power to the vendor to withdraw part of the property from a building scheme. The clause in the text expressly negatives the existence of any such scheme: *Earl of Zetland* v. *Hislop*, 7 App. Cas. at p. 452; and should be inserted unless it is clear upon the particulars and remaining conditions that the restrictions are imposed merely for the benefit and protection of the vendor himself, and not for the common benefit of the purchasers. The fact that the vendor puts up the whole of his property for sale, is almost, if not quite conclusive (unless there is something contradictory) that the covenants taken from the purchasers are intended for the benefit of each purchaser as against the others: *Nottingham, &c., Co.* v. *Butler*, 16 Q. B. D. at p. 785; and even where the vendor withholds from the sale a portion of his property, this (unless contradicted) may be the proper inference from the facts of the sale: *Collins* v. *Castle*, 36 Ch. D. 243; *Re Birmingham, &c., Co. & Allday*, [1893] 1 Ch. 342; and see the conditions essential to the existence of a building scheme stated *ante*, p. 270, note (*b*).

(*d*) See *ante*, p. 268, note (*e*).

of the easemts [& restrictive condons] wch are to affect such lot or pt of a lot accdg to these condons. register to contain restrictive conditions(*e*).

Forms of Restriction (*a*).

a. (1) The [Every] pchaser shl forthwith make & for ever maintain pper boundary walls or substantial [oak] fences on his plot on the sides marked —— on the sale plan [of such height & design as shl be prescribed by the vendor]. Walls and fences.

(*e*) The above condition is for use on the sale in lots of land in a compulsory district. The vendor should protect himself by entering a caution against first registration, so as to be certain of obtaining notice of the application. The cheapest plan will be to enter up such a caution against all the land comprised in the sale.

In the case of registered land it is now provided (L. R. Act, 1925, s. 40 (1)), that the proprietor may in any registered disposition, by covenant, condition, or otherwise, impose or make binding, so far as the law permits, any obligation or reservation with respect to the building on or other user of the registered land or any part thereof . . . in like manner as if the proprietor were entitled to the land for his own benefit. See Rules, Schedule, Form 43, from which it appears that only restrictive covenants can be registered, although affirmative covenants may be added to the transfer. Restrictions on registered land.

The registered proprietor may also (sub-s. 2) release or waive any rights resting in covenant on condition or any obligation or reservation annexed or belonging to the registered land; and by sub-s. (3) it is provided that entries shall be made on the register in the prescribed manner of all obligations and reservations imposed by the proprietor, of the release or waiver of any obligation or reservation, and of all obligations and reservations acquired by him for the benefit of the registered estate. See Rule 212.

As to the right of any person entitled to the benefit of a restrictive covenant with respect to the user of registered freehold land, to have notice thereof entered on the register, see L. R. Act, 1925, s. 50.

(*a*) Where it is desired to adopt the plan suggested, *ante*, p. 388, note (*c*), of annexing to specified property of the vendor, qualified covenants on the part of each purchaser not without the consent of the owner for the time being of the principal mansion house thereon, to use the lot purchased in a manner inconsistent with the stipulated restrictions, the latter may be prefaced as follows: "Except with the consent in writing of the estate owner for the time being of the mansion house on ppty of the vendor known as ——, no house or bldg shl be erected & nothing shl be done or permitted upon the ppty pchased [plots —— to —— inclusive] in contravention of the stipulons following" (that is to say): Form of restriction where the benefit of qualified covenants is to be annexed to land of the vendor.

(*a*) No wall or fence, &c.

The same. Limit as to height.

a. (2) No wall or fence against a road (except walls or fences now existg) shl exceed —— ft —— inches in height from the surface of the road or footpath.

The same. Another form.

a. (3) THE [Every] pchaser shl forthwith erect & for ever after maintain at his own expse a good & sufft fence [consistg of a wall or oak park paling of not less than 5 feet or more than 7 feet in height] on the sides of the premes [on one side of his plot] within the boundary line marked T on the plan, & also a fence in front of & to separate the same from the footpath of —— road [the road or street adjacent thto as shown on the plan], the last mentd fence to consist of dwarf walls with footgs of stone, or iron curb & iron palisadg, with piers, gate piers, & gates, or of close park paling & swing gates, agreeably to a [uniform] design, to be approved of by the vendor [provd that if one pson pchases two or more adjacent plots, it shl not be necy to make or maintain any fence for the ppose only of separatg such plots from each other]. In case any pchaser makes default in erectg or repairg the said fences within —— days after notice in writg so to do shl have been given to him by the vendor, or left for him on his land, the vendor shl be at liberty to erect or repair the same at the expse of the pchaser, the amt whrof shl be pd on demand made or left as last afsd.

Buildings. To erect buildings of a uniform kind.

b. (1) THE [Every] pchaser shl within —— calr months from the date of his convce, at his own cost, & under the inspection & to the satisfon of the architect or surveyor of the vendor, erect & finish, in a good, substantial & workmanlike mner, upon each of the plots of ground included in the sale to him, one dwelling house of the cost of £—— at the least, upon the same plan, of the same form & dimensions, & after the like mner as the houses now already erected on the east side of the road coloured —— on the plan.

The same. As to number and value of houses.

b. (2) ONE house only, at the cost of £—— at least, shl be erected on each plot, such cost to be exclusive of any stablg & outbldgs. No house shall be let out in separate tenements, but this shall not prevent part of a house being let as furnished lodgings (*b*).

(*b*) See *Rogers* v. *Hosegood*, [1900] 2 Ch. 388; *Kimber* v. *Admans*, [1900] 1 Ch. 412; *Osborne* v. *Bradley*, [1903] 2 Ch. 446; *Ilford Park Estates* v. *Jacobs*, *ib.* 522; *Formby* v. *Barker*, [1903] 2 Ch. 539; *Brigg* v. *Thornton*, [1904] 1 Ch. 386.

b. (3) The [Every] pchaser shl within —— calr months of the sale erect & finish [on his plot] on the site coloured red on the sale plan in accordce with plans & elevons to be approved by the vendors or their surveyor, & for ever thrafter maintain in good repair [two] substantial dwelling-houses with suitable outbldgs & conveniences of the value of at least £—— each, *or*, "of a clear yrly value (*c*) for lettg or occupon of at least £—— each," *or, if sale is on chief rent*, "of a total value of at least double the value calculated at 25 yrs' pchase of the rent charged on such plot." The same. Another form.

b. (4) One house only, of the cost of at least £——, or two semi-detached houses only, of the cost of at least £—— each, and in all respts accdg to plans & elevons to be approved of by the vendor's surveyor, shl be erected on the premes [on each of the plots numbered resply on the plan from —— to ——, both inclusive], but stablg or other outbldgs, accdg to plans & in situations to be approved of by the sd surveyor, may be erected on the premes [on any of such plots]. The same. Another form.

b. (5) No bldg or erection except the sd fence [a boundary fence not more than —— ft high, made of materials & of a design to be approved of by the vendor], shl at any time be erected on the premes [on any of the sd plots] within —— ft of —— road [any of the roads or streets marked on the sd plan]. The same. Buildings not to abut on roads. The same.

b. (6) The front wall of any house or bldg to be erected on any pt of the premes shl range & be in a line with the bldg line marked on the plan, & no bldg or erection of any kind exceptg verandahs, porches, bay windows, or similar structures (*a*), to be approved of by the vendor's surveyor, & exceptg such boundary fence as afsd, shl be erected on any portion of the premes [of any plot] which lies betn the bldg line & any of the roads or streets marked on the sd plan. To keep building line.

b. (7) The line of frontage of the bldgs on the respive plots shl not approach nearer to any of the roads than the line marked "bldg line" upon the plan exceptg porticoes & bay The same. Another form.

(*c*) As to the meaning of "yearly value," see *Re Elwes*, 3 H. & N. 719.

(*a*) This exception if intended ought to be inserted: *Lord Manners* v. *Johnson*, 1 Ch. D. 673. The covenant is within the second resolution in *Spencer's Case* (1 Smith's L. C.), see *Ricketts* v. *Enfield Churchwardens*, [1909] 1 Ch. 544.

windows or other similar structures, wch shl not project more than —— ft beyond such line, & no bldg other than walls & fences under 7 ft in height shl be erected nearer to any of the roads than —— ft.

The same. As to temporary buildings.

b. (8) No temporary bldgs of any kind shl at any time be erected on the premes [any plot], other than sheds & workshops to be used only for works incidental to the erection of permanent bldgs thron.

The same. Not to erect buildings, except private dwelling-house.

b. (9) No [permanent] bldg shl be erected on the premes [any plot except the plot numbered —— on the sd plan] except a private dwelling-house & the stablg, garage, offices, & outbldgs throf, & no bldg erected thron shl at any time be used except for the pposes last afsd.

The same. As to cost of buildings.

b. (10) For the pposes of these condons [regulons] the cost of every house & other bldg shl be taken to be the net first cost throf, in labour & materials alone (exclusive of ornamental fittgs) to be estimated by the sd surveyor at the lowest current prices.

The same. Plans to be approved by vendor.

b. (11) No dwelling-house (*b*) or other bldg shl be erected on any plot unless the plans, drawgs, & elevons throf shl have been previously submitted to & approved of in writg by the vendor.

The same. Another form.

b. (12) No new bldg & no addon to any existg bldg shl at any time be erected on the land, except in a position & accdg to plans & descrons to be previously approved in writg by the surveyor for the time being of the vendor, but such approval shl not be withheld unless the erection of such new or addonal bldg shl have the effect of materially obstructg views now enjoyed from other pts of the land, or lesseng the amenity thof by being unsightly or inappropriate to the site either in respt of position, size, or value. A reasble fee, not exceedg —— guineas may, on each occasion, be charged by the surveyor for his trouble, & pd by the pchaser (*c*), & for the ppose of this

(*b*) A covenant that the building to be erected shall only be of a certain design and be used as a dwelling-house does not prohibit the erection of an advertisement hoarding: *Foster* v. *Fraser*, [1893] 3 Ch. 158; but a hoarding may nevertheless be a building within the meaning of a restrictive covenant: *Nussey* v. *Provincial, &c., Co., Ltd.*, [1909] 1 Ch. 734. As to the power of a borough council to erect a hoarding on a disused burial ground, see *Paddington Borough Council* v. *Att.-Gen.*, [1906] A. C. 1. See also *post, sub tit.* "Leases (Houses)."

(*c*) An agreement to pay the fee to the surveyor seems to be personal and

condon a report in writing of the surveyor & signed by him shl be taken to be conclusive as to the materiality of such obstron.

b. (13) No hoardg shl be erected on any plot for advertisemts not relatg to the sellg or lettg of such lot. Hoardings (*d*).

c. No dwg-houses shl be erected on any pt of the land so as to stand back to back, witht yards or gardens of a depth of at least —— ft interveng betn them, nor with their backs abuttg on any street. As to yards or gardens.

d. (1) No windows, lights, doors, or opengs shl be placed on the —— side of any bldgs erected on the land. Windows, &c.

d. (2) No opengs, lights, or windows shl be put in any bldg or wall already erected or hrafter to be erected on the land, so as to give or open upon the adjoing ppty within a distance of —— ft thfrom. The same. Another form.

d. (3) For protectg the privacy of the house & premes now in the occupon of the vendor, no window or openg shl at any time be made on the south or east side of any bldgs wch may be erected on the land now sold so as to overlook such house & premes, or any pt throf. The same. For securing privacy of vendor's premises.

e. (1) The walls to be erected on the —— sides of lots —— as shown on the sale plan shl, for the entire length throf, be party-walls (*a*) built as to one half throf on the land of ——, & as to the other half throf on the adjoining land of ——, & shl be —— inches thick up to a height of —— ft, & —— inches thick above that level, & shl be reected by & at the cost of ——. [The pchaser first bldg a party-wall shall be repaid by the pchaser of the adjoing plot one half the current value of such wall, the same to be determined at the cost of the pchasers in case of dispute by the vendor's surveyor, whose decision shl be final (*b*).] Party-walls.

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collateral, and would not run with the land. In the absence of stipulation the surveyor's fees are payable by the vendor: *Reading Industrial, &c., Sccy.* v. *Palmer*, [1912] 2 Ch. 42.

(*d*) See note (*b*), p. 364.

(*a*) A party wall belongs to the adjoining owners in divided parts as if severed vertically, each owner having a right to support and user over the other part: s. 38 of the L. P. Act, 1925. See *Sack* v. *Jones*, [1925] 1 Ch. 235. As to party-walls.

(*b*) *Irving* v. *Turnbull*, [1900] 2 Q. B. 129. See *Mason* v. *Fulham B. C.*, [1910] 1 K. B. 631, discussed 54 Sol. J. 423; *Selby* v. *Whitbread & Co.*, [1917] 1 K. B. 736, 741.

The same. Another form.

e. (2) ALL main or boundary walls or fences betn the premes sold & the adjoing ppties wch now are party-walls (*a*) or pty fences, shl continue to be such, & shl be so used, repaired & maintained.

The same. Another form.

e. (3) THE gable & wall on the —— side of the house, into wch the main timbers of each immedly adjoing house are laid or inserted, & the walls in the rear & front by wch each such house & the land set apart & appropriated for each house so adjoing are separated, shl at all times hrafter be considered as party-walls (*a*) with all the rights & privileges that attach thto.

As to user of premises (*c*).

f. (1) No bldg to be erected on any of the plots [except plots —— & ——] shl at any time hrafter be used for any other ppose than a private dwelling-house or a coach-house & stables, garage, & outbldgs belongg thto ; & no trade, manufacture, or business of any kind [except that of a solicitor, surgeon or physician] shl at any time be set up or carried on in or upon any of the plots [except as afsd].

The same. Another form.

f. (2) NEITHER the land nor any existg or future bldg thron shl be used for carrying on any trade or business, nor as a school, hospital, or public institution or charity, nor for holdg public meetgs, nor for public worship, nor orwise than as a private dwelling-house, but this shl not preclude the reception of lodgers or boarders, nor the carrying on of a learned or artistic profession witht other outward indicon throf than a brass or other plate or inscription coverg the space of not more than 2 ft by 1 foot.

The same. Another form.

f. (3) THE premes or any bldg thron shl not [None of the plots or any bldg thron shl] at any time be used for the ppose of any trade, manufacture, or business of any descron, or anythg in the nature throf, or havg the appearce or show throf, or as an asylum, institution for mental defectives, hospital or other charitable institution or by any public body or society, or as a church, chapel, school, or mission hall, or as tea-gardens or an hotel, public-house, or tavern, or for the sale of beer, wine, or spirits, or as a place of public amusemt, entertainmt, or resort.

The same. Another form.

f. (4) No hotel, tavern, tea-gardens, manufactory, mill, gasworks, works for supplying electricity or water, hospital, asylum, church, chapel, mission-house, school, or shop (*d*) shl

(*c*) See *post, sub tit.* "LEASES (HOUSES)."

Objectionable trades.

(*d*) The enumeration of particular objectionable trades, &c., though common, is necessarily not exhaustive, and if general words are added, as in

at any time be erected, opened or carried on upon any of the plots, & no spirituous or fermented liquors shl be sold in or upon any of the plots, or in any bldg to be erected thron.

The same. As to plot reserved for hotel.

f. (5) THE plot numbered —— on the plan, wch has been set apart for an inn, hotel, or public-house, shl not be used for any other ppose, except that, with the licence in writg of the vendor, the same may be converted into a private dwelling-house : *add provisions as to plans, costs, &c., see above forms.*

The same. Not to carry on offensive trades, &c. (*e*).

f. (6) NONE of the plots or any bldg to be erected thron shl be used for any offensive, noisy, or dangerous trade, business, pursuit, or occupon, or any ppose wch shl or may be or grow to be in any way a nuisance, damage, grievce, or annoyce to the vendors, their hrs or assns, or their tenants, or to the owners or tenants of any of the neighbouring ppty or the neighbourhood, or wch may tend to depreciate or lessen the value of the afsd este of the vendors, or any pt throf, as a residential ppty (*a*).

The same. Another form.

f. (7) No bricks or tiles shl at any time be made or burnt, nor shl any clay or lime be burnt on the premes [on any plot], & no operative machinery shl at any time be fixed or set thron, or in any bldg to be erected thron, & no manufacture or operons of a noisome, offensive, dangerous, or noisy kind shl be carried on in or upon the same, nor shl anything be done thron wch may be or grow to be a nuisance or annoyce to the vendor or his tenants, or the neighbourhood.

To form passage.

g. PLOTS —— are sold subjt to the obligon on the pt of the pchasers to leave open & unbuilt upon a passage or space —— ft wide as shown on the sale plan, & each pchaser shl pay one-

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form *f.* (6), there may be some risk of the *ejusdem generis* doctrine being applied ; see *Doe* v. *Bird*, 2 Ad. & El. 161.

(*e*) Using the property as a hospital : *Tod-Heatly* v. *Benham*, 40 Ch. D. 80; but cf. *Frost* v. *King Edward VII. Welsh, &c., Assocn.*, [1918] 2 Ch. 180; or as a school : *Wauton* v. *Coppard*, [1899] 1 Ch. 92 ; may be a breach of the covenant ; but probably using it as a nursing home is not : *Ten Bosch* v. *Cohen*, unreported ; see 48 Sol. J. 240 ; and see cases cited Elph. Introd., 7th ed., 336, and *post, sub tit.* "LEASES (HOUSES)."

Annoyances, though not nuisances at law.

(*a*) This condition, which is meant to extend to "annoyances," though not constituting nuisances in law, and whether they affect the vendor and his tenants or strangers, will be effectual : *Tod-Heatly* v. *Benham*, 40 Ch. D. 80. The protection should not be confined to the owners of "adjoining" property : *Case* v. *Horsell*, [1912] 3 K. B. 533 ; *Derby, &c., Co.* v. *Crompton, &c., Bank*, 57 Sol. J. 701.

half of the cost of formg, sewerg, pavg, completg, repairg, & maintaing such passage, so far as the same is co-extensive with his plot.

As to making and maintaining roads.

h. (1) THE [Every] pchaser shl, accdg & in proportion to the extent of his frontage towards the projected street or road delineated in the plan, contribute, with the owners for the time being of the other plots comprised in this [& a former] sale & havg such frontage, to the expense of makg & formg the sd projected street into a road pperly metalled & fit for carts, waggons, & carriages, with a flagged footway —— ft wide on each side throf, & with a cover for the watercourse at the side throf, & such main sewers or drains under the same as shl be made or be (*b*) required to be made by the District Council or other competent authority *or*, "pper main sewers or drains under the same at the lowest level that can be made in order to obtain a suitable & sufft fall," & shl at all times thrafter until the same shl be taken over by the District Council or other competent authority, contribute in the proportion afsd towards the expse of repairg & maintaing the same street or road, a right of way over wch is included in the sale of each plot [& the sd sewers or drains].

The same. Another form.

h. (2) THE [Every] pchaser shl, at his own expse, level, form, & pave one equal half pt in breadth of the sd street intd to be called ——, so far as the same shl be co-extensive with his plot, & shl also pave with flags a footpath of the breadth of —— ft in front of all bldgs to be erected on & co-extensive with his

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Powers of District Councils.

(*b*) As to the powers of District Councils as highway authorities, see Public Health Act, 1875, ss. 144—148, 150, as amended by the Statute Law Revision Act, 1898, s. 1, and Sched. Part 1; the L. G. Act, 1894, ss. 21 (1), (2), 25; and the Public Health Act, 1925, Part II.; *Redhill Gas Co.* v. *Reigate R. D. C.*, [1911] 2 K. B. 565; *Postmaster-General* v. *Hendon U. D. C.*, [1914] 1 K. B. 564; and see *ante*, p. 187, note (*a*). As to their rights, powers, and duties in respect of the making or acquiring of sewers and drains, see Public Health Act, 1875, ss. 13—26, and the L. G. Act, 1894, s. 21 (1), (2): *Turner* v. *Handsworth U. D. C.*, [1909] 1 Ch. 381. They have power for making sewers under ss. 15 and 16, and for enforcing the drainage of undrained houses into sewers under s. 23 of the Public Health Act, 1875; also in urban districts houses may not be built without drains emptying either into sewers or cesspools. District Councils, however, cannot compel other persons to make sewers.

Arterial roads.

As to arterial roads, see Part II. of the Development and Road Improvement Funds Act, 1909, now amended by the Minister of Transport under the Roads Act, 1920, s. 3. See also the Roads Improvement Act, 1925.

plot, & shl for ever thrafter maintain such half pt of the sd road & the footpath adjoing the same in good repair & condon until the same shall be adopted as a public thoroughfare.

h. (3) The [Every] pchaser [The owner or owners of each plot] shl at all times hrafter when required by the vendor, pay to him or contribute an equal or proportionate share with the owners of the other houses & land [plots] adjoing the [intd] roads marked on the sd plan, accdg to the extent of their respective frontage to such respective roads *or*, "accdg to the prices pd by them for their respective plots," of the expse of [makg] repairg, cleansg, & maintaing, to the satisfon of the vendor, the sd roads & pper sewers & drains under the same, & all other expses connected thwith, until the same resply shl be adopted by & taken over by the District Council (*c*) or local authority [such share or proportion in case of dispute to be settled by the surveyor for the time being of the vendor]. The same. Another form.

h. (4) The pchasers of the plots numbered —— to —— inclusive on the sd plan shl, at their joint & equal expse, forthwith make & for ever after maintain the road marked —— on the sd plan, & shl, at the like expse, curb, flag, & maintain the footpath on the side throf, of —— ft wide as marked on the sd plan, & such road & footpath shl be for the exclusive use of the owners of the sd plots & their friends, visitors, servants, & others going to or coming from the houses to be built on the sd plots, & shl not be dedicated to the public witht the consent of the owners of all such plots, & no waggon or heavy cart shl be allowed to pass over the sd road, except betn the hours of 6 & 10 in the forenoon. The same. Another form.

i. The vendor shl be at liberty at any time within —— years from the sale to lay down & construct sewers, drains, & water-pipes on any of the plots, & to keep in repair & maintain the same for the general convenience of the este. As to making sewers, &c.

j. No trees or shrubs shl be allowed to grow upon the land to such a height or density as materially to obstruct views at psnt enjoyed from any other ppties in the sd manor, *or as the case may be.* Trees and shrubs not to obstruct view.

k. No stone shall be quarried on or from the land except for the ppose of preparg for authorised bldgs, or of laying out or adaptg the ground as garden or pleasure ground. As to quarrying stone.

(*c*) See note (*b*) on preceding page.

As to sand and gravel.

l. No sand or gravel shl at any time be excavated or dug out of the land [any of the plots] except for the ppose of laying the foundons of the houses or outbuildgs to be erected thron, or for use in erectg such bldgs, or in the gardens or grounds throf.

As to training fruit trees.

m. The vendor shl have liberty to nail fruit trees & plants agst any fence *or* "wall" wch may abut on his land, he, at his own expse, repointg such wall on the side next to his land when necy.

Penalty for breach of stipulations(*a*).

[*n.* If any pchaser shl refuse or neglect specifically to pform any stipulon involving the expenditure of moy either bfe or after he shl have ceased to have any intt in the plot pchased by him, it shl be lawful for but not incumbent on the vendor specifically to pform the same, & for that ppose if necy to enter on that plot at any time within twenty-one yrs from the day of sale, & the costs & expses so incurred by the vendor (to be assessed or determined by the vendor's surveyor for the time being) shl, togr with interim intt thron at the rate of £5 p.c. p.a. if the same shl be incurred by the vendor within twenty-one years from the day of sale, be charged on the plots or plot in respt of wch the refusal or neglect shl have taken place.

(*o*) In these stipulons the word vendor means the vendor or other the pson or psons deriving title under him to the ppty for the time being known as the —— Este.]

XIII.

Custody *of* Title Deeds *and* Covenants *to* Produce (*b*).

Insufficiency of covenant

1. No objection or requon shl be made on the ground of any covt, acknowmt, or undertakg, for the production or safe

(*a*) If, as is sometimes provided (see *ante*, p. 356, f. 3), the original purchaser is not liable for a breach of covenant after he has parted with the land, the provision for personal repayment cannot be enforced after this event has happened, but the charge may be enforced. It appears right to restrict it as to perpetuities. Another plan is to give the vendor a power of entry and perception of the rents and profits until the costs are satisfied thereout: see *post*, pp. 377, 522; but the form in the text is perhaps preferable in the case of small plots.

(*b*) See L. of P. Act, 1925, s. 45, and *ante*, p. 237. As to the possession and production of deeds, see *post*, p. 515.

custody of munimts of title being defective or insufft, or on the ground of the absence of any such covt, acknowmt, or undertakg. for production (*c*).

2. As the munimts of title relate to ppty not included in the sale, they will be retained by the vendor, who will if required give to the pchaser a statutory acknowmt of the right to production & dely of copies & undertakg for safe custody, *or, for trustee or other fiduciary vendor,* " but witht any undertakg for safe custody " throf, such acknowmt [& undertakg] to be prepared by & at the expse of the pchaser (*d*). Where all deeds retained.

3. Such of the munimts of title in the vendor's posson as relate exclusively to the ppty sold will be delivered to the pchaser. All other munimts in the vendor's posson will be retained by him, & he will, &c., *as in form* **2**. Where some retained.

4. Munimts of title in the vendor's posson relatg to any of the ppty now offered for sale, & also to other ppty of the vendor, *or,* " of which he is tree," will be retained by him. Munimts (other than documts of record) relatg exclusively to any of the ppty offered for sale will, if relatg to one lot only, be delivered to the pchaser of such lot, but if relatg to more than one lot, will be retained by the vendor until the whole of the ppty to wch they relate shl have been disposed of (whether at the psnt or any (*a*) future sale) whrupon the same will be delivered to the largest pchaser in value of the lots to wch the same relate (*b*), or in Sale in lots where deeds to be delivered to largest purchaser or to such purchaser as vendor thinks fit.

(*c*) Cf. the form, *ante*, p. 343, and see *Halkett* v. *Earl of Dudley*, [1907] 1 Ch. at pp. 603, 604, and *ante*, p. 237, note.

(*d*) The following is sometimes added on a sale by private contract :— " but to be perused on behalf of & executed by the vendor free of expse to the pchaser, & a memo of the sale & of the sd acknowmt & undertakg shl be endorsed on one of the ppal deeds retained." Such a memorandum ought merely to state that certain land was sold to A., but it may, if the purchaser requires, contain notice of any provision in his conveyance restricting the use of or conferring rights over land comprised in the deeds not handed to him : L. P. Act, 1925, s. 200. The conveyance ought not to be referred to unnecessarily, as, if it is, inconvenience may arise owing to a subsequent purchaser of another part of the property from the original vendor having notice of a deed which the vendor cannot produce to him so as to show that it does not affect the property comprised in the subsequent sale.

(*a*) If the vendor is under a similar contract with any purchaser at a former sale add here, " past, or."

(*b*) See *Griffiths* v. *Hatchard*, 1 K. & J. 17.

the event of equality of pchase-moy to the pchaser of the first lot in order of sale of the lots in respt of wch the pchase-moy is equal, *or*, " will be delivered to such of the pchasers as the vendor may think fit," *or*, " to the pchaser of lot 1." And the vendor will (if required) give to any pchaser a statutory acknowmt of the right to production & dely of copies & undertakg for safe custody, *or, for tree or other fiduciary vendor,* " but witht any undertakg for safe custody," of any munimts retained by him (whether permanently or temporarily) under this condon (*c*).

Provision for indemnity of vendor in respect of liability under former covenants for production (*d*).

5. In any case in wch the vendor is under any obligon to any former pchaser for the production or safe custody of any munimts wch are handed over to the [any] pchaser at the psnt sale, the latter pchaser shl take upon himself such obligon in exoneron of the vendor thfrom, & shl, if required, enter into a pper covt of indemnity in that behalf, or give a statutory acknowmt for production & dely of copies & an undertakg for safe custody throf, to the pson or psons entitled to the benefit of the origl covt, the instrumt or instrumts for that ppose to be prepared by & at the expse of the vendor or covenantee, but the expse of the perusal & execution throf by or on behalf of the pchaser to be borne by him.

XIV.

Sale *of* Rent-charges (*e*).

Commencement of title.

1. The title shl commence with a pchase deed in 18—, by wch the rent-charge was created, *or*, " with a convce on sale of

(*c*) The old form of condition provided that the covenant for production should be given by the purchaser to whom the deeds were delivered, but there can be no objection to the statutory acknowledgment, &c., being given by the vendor before parting with them, as his liability ceases on his so doing.

(*d*) This of course only applies where the vendor has entered into an absolute covenant, his liability under which will continue after he parts with the deeds, according to the form formerly in use in the case of beneficial owners, which was more onerous than the statutory covenant.

(*e*) As to the extinguishment of rent-charges by release and as to the apportionment of and remedies for recovering rent-charges, see *ante*, pp. 69—70, note. As to registration (which is not compulsory, L. Reg. Act, 1925, s. 120 (1), a rent-charge being an incorporeal hereditament), see Rules 50, 52.

the rent-charge in 18—," & no earlier or other title thto or evidce of the creation throf shl be required.

2. The title to the sevl lots shl consist of the duplicates of the respective deeds creatg the same, & the recent title thto resply commencg with the assurces throf resply to A., deced, dated as to lot 1 in 18—, &c., or, " the sevl assurces & will specified in the —— column of the annexed table," & the subseqt devolon of title [& a declaron to be made at the expse of any pchaser requirg the same that the respective rents have been regularly pd to the respective psons appearg to be entitled thto for the last —— yrs], & no pchaser shl call for or make any objection or requon in respt of the intermediate title to any of the rents betn the date of the creation throf & the sd respective instrumts by wch the recent title commences. The same.

3. The duplicate deed creatg the rent formg lot — is lost. The pchaser shl not require the production of that deed or the duplicate throf nor any abstract or copy throf, nor any other evidce of the contents or execution or stampg throf beyond the recital contd in subseqt deeds (one of wch bears date as far back as 18—), nor make any objection or requon on this acct. Loss of duplicate deed.

4. No objection shl be taken as to the form in wch any rent was reserved. Form of reservation.

5. No further proof of the identity of the ppty on wch any rent included in the sale is charged shl be required than is afforded by the abstracted munimts & such other evidce (if any) as may be in the posson of the vendor. And no objection shl be taken in respt of any defect in such identificon. Identity.

6. The rents of £—— (comprisg lot —) & £—— (comprisg lot —), wch have been divided for the convenience of sale, were origlly created as one rent of £——, & the pchasers of these lots shl not make any objection or requon in respt of such division or of the origl rent not being duly apportioned as against the owners of the land. Division.

7. The owner of the ppty out of wch the rent-charge formg lot — issues, is entitled to indemnity out of such rent-charge agst an overridg rent-charge of £—— wch was origlly charged on the sd ppty togr with other ppty & agst certain covts & condons contd in the deed creatg the overridg rent. The pchaser shl take subjt to that right of indemnity, & shl not require production of the deed by wch the overridg rent was created, or make any objection or requon in respt throf. Sale subject to right of indemnity against overriding rent.

Sale subject to unclaimed rent.

8. No objection shl be made on the ground that any of the rents hby offered for sale or the lands out of wch they issue are or may be (either alone or with other ppty) subjt to any overridg chief or ground rent or rents, & the pchaser shl not require any indemnity against the overridg rent or rents other than such indemnity (if any) as is already existg, but shl be satisfied with a declaron to be made if required at the pchaser's expse that no claim has ever been made against the vendor or his predecessors in title in respt of any such rent.

Sale with benefit of indemnity against overriding rent.

9. The paymt of the overridg rent of £—— mentd in the parlars was by a convce of, &c., charged upon a rent of £—— (issug out of —— square yards of land, situate, &c. & now payable by X.) in exoneron of & by way of indemnity to the owners of lot —. The pchaser of lot —— shl not make any objection in respt of the sd rent of £—— or the sufficiency of the sd indemnity.

Overriding rent to be charged exclusively on one lot.

10. The lands (to be retained by the vendors) out of wch the rents formg lots 1 & 2 will issue, are subjt togr with the land formg lot 3 to an overridg chief rent of £——, & to certain powers of distress, entry, & rect of rents & profits in relon thto, but so far as regards the pchasers of those lots (or the vendors as to any lot remaing unsold), the overridg rent shl be charged exclusively on lot 3, & that lot will be conveyed subjt to & charged with (*a*) the whole of the sd overridg rent wch in the conveyce to the pchaser of that lot shl be expressed to be charged exclusively thron in exoneron of the land retained by the vendors, & the remedies conferred by s. 190 (*b*) of the L. P. Act, 1925, shl apply accordgly.

Apportionment on completion.

11. Each pchaser shl on complon be entitled to the rent pchased by him, or to an apportioned pt of any instalmt throf accrug due as from the day fixed for complon, & in case of an apportionmt being necy, shl pay to the vendor his proportn of the accrug instalmt.

As to unity of ownership (*c*).

12. No objection shl be taken by reason of a pt of the ppty on wch the rent was origlly charged havg been subseqtly acquired by or become vested in the then owner of the rent.

(*a*) See L. P. Act, 1925, s. 77.

(*b*) This section, which supplies the usual powers of distress and entry and receipt of rents and profits in favour of the owner of the exonerated land, applies unless a contrary intention is expressed in the conveyance in which the rent is expressed to be exclusively charged: see sub-s. 6.

(*c*) It is a question whether such a partial unity of ownership would not

13. The ppties on wch the rents included in the sale are resply charged, are believed & shl be taken to be correctly described, & no error, misstatemt, or misdescription in the parlars as to the ppty so charged, or as to the ownership of such ppty, shl annul the sale or be made a ground for any claim to compenson in respt throf. Misdescription.

14. No pchaser shl make any objection or requon on the ground that the rent comprised in his lot is not always as to amt correctly stated in the sevl documts of title relatg thto, & the sevl sums specified in the parlars, wch are the amts of rents reced by the vendors for upwards of —— yrs, shl be assumed to be correct notwithstdg any such discrepancies. Amounts.

XV.

Sale *at* Rent-charges *for* Building (*a*).

1. The pson offerg the best reserved yrly rent-charge for any lot (wch shl commence from the —— day of ——) shl be the pchaser of that lot. Biddings.

2. *Other usual condons as to biddgs, see* p. 245.

3. Every pchaser shl immedly after the sale pay into the hands of the auctioneer a deposit equal to one yr's rent of his lot, wch sum will accdly on the complon of the pchase be allowed to the pchaser as a discharge from the first yr's rent: and every pchaser shl also immedly after the sale sign an agrmt in the form subjoined. Deposit.

[**4.** The rent or rents payable by any pchaser may, if he so desire, be made redeemable on or bfe the —— day of ——, on paymt to the vendors, or the owner or owners throf, of a sum equal to 25 yrs' pchase throf, the expses of or incidental to such redmon to be borne by the pchaser.] Redemption (*b*).

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extinguish the rent altogether, but there is a distinction where the grantee of the rent-charge acquires the land out of which it issues by his own act or by the course of law, see Co. Litt., 147 b, 149 b; *Dennett* v. *Pass*, 1 Bing. N. C. 388: Carson, R. P., 2nd ed., 532. Query whether equity would relieve, Com. Dig. tit. Chy. 4, IV., 1 Story's Equity, par. 474, 475; *Slater* v. *Buck*, Moseley, 256; Jud. Act, 1873, s. 25 (4).

As to the extinguishment of rent-charges by release see *ante*, p. 69, note.

(*a*) Compare the form of contract for sale on chief rent at p. 400, *infra*.

(*b*) The provision in the C. Act, 1881, s. 45, for redemption of rent-charges, did not apply to rents reserved on sales, see sub-s. (5); but s. 191 of the L. P. Act, 1925, includes that case.

Reservation of rent-charge to vendors in lieu of tithes.

[**5.** Each lot will be charged with an annl rent in lieu of tithe rent-charge (*c*) to be reserved to the vendors & made payable half-yrly, wch rent is to be fixed by the auctioneer, but is not to exceed the amt of the tithe rent-charge as fixed by the Tithe Act, 1925. No pchaser shl require any apportionmt of the tithe rent-charge, or any further indemnity in respt throf than the covt in his convce by the vendors to pay the same (*d*).]

6. *Sale to be subject to stipulations & conditions mentioned in the Schedule,* p. 354, f. **2.**

Frame of covenants for payment of rent and performance of conditions, &c.

7. The rents reserved shl be made payable half-yrly on the —— day of ——, & —— day of ——, free from all deductions (*e*) whatsr except ppty tax, & each convce shl contain full & pper covts by the pchaser to pay the rent or rents reserved on his lot or lots & to observe & pform [such of] the afsd stipulons & condons [as are applicable to the lot or lots pchased by him] & to keep the bldgs to be erected on his lot or lots properly repaired [& insured]. Every negative covt to be so framed, &c., *continue provision as to burden & benefit of covenants as may be desired, see* p. 356, f. **3**, *and the variations in the note thereto.*

Powers for securing or compelling payment of rent(*f*).

8. The convce of each lot shl empower the owner for the time being of the reserved rent to exercise all the powers & remedies for recovering & compelling paymt of the same

(*c*) Tithe rent-charge issuing out of land is payable by the owner, not by the occupier, see Tithe Act, 1891, s. 1, but the provision does not apply to the exceptions mentioned in s. 9 (2): see *post, sub tit.* "Leases (Agricultural)." By the Tithe Act, 1925, the amount of the tithe rent-charge is now stabilised.

(*d*) The purchaser cannot require tithe rent-charge to be apportioned at the cost of the vendor: see *ante,* pp. 256 and 346.

(*e*) As to the effect of these words in exonerating the owner of the rent-charge from liability to land tax, see 3 Dav. Prec., 3rd ed., 313, note.

Powers which must be expressly stipulated for.

(*f*) In the absence of express stipulation in the conditions, the vendor would be entitled to a power of distress as incident to the rent, 4 Geo. 2, c. 28, s. 5; see per Lindley, L.J., *Re Willis,* 21 Q. B. D., at p. 394; *Dodds* v. *Thompson,* L. R. 1 C. P. 133; but would not apparently be entitled to have his conveyance in such a form as to incorporate either expressly or impliedly either of the remaining powers or remedies conferred by s. 121 of the L. P. Act, 1925: see Williams, V. & P., 3rd ed., 631 *et seq.*

As to the recovery of a rent-charge by action, see *ante,* p. 69, note.

Sale by court.

Where an annuity charged upon the *corpus* ı *Re Tucker,* [1893] 2 Ch. 323; or on the rents and profits only: *Hambro* v. *Hambro,* [1894] 2 Ch. 564; of settled real estate is in arrear, the Court has power to order the arrears to be raised by sale or mortgage of the estate, though the making of such

given by s. 121 of the L. P. Act, 1925 (*a*), in respt of rent-charges & other annual sums [except the power of limiting a term of years *or* " but so that the power of entry & perception of income given by that section shl be made exercisable if at any time the reserved rent or any pt throf remains unpaid for — days next after the time appointed for any paymt in respt throf " *or orwise as the case may require*] & shl also limit to the owner for the time being of the reserved rent, an absolute power of re-entry on breach of the pchaser's covt to be contd in such convces " to erect, cover in & completely finish & make fit for habitation " *or otherwise according to the wording of the stipulation* a bldg or bldgs on the lot pchased in accordance

Absolute power of re-entry on breach of covenant to build (*b*).

an order is a matter, not of course, but of discretion. Such a jurisdiction has long been established where the real estate charged is vested in a tenant in fee simple in possession. Where the rent-charge is secured by a term, a sale of the fee will not be ordered: *Hall* v. *Hurt*, 2 J. & H. 76; *Blackburne* v. *Hope-Edwardes*, [1901] 1 Ch. 419.

Perpetuity rule does not apply to statutory or corresponding express powers for recovery of rent-charge.

(*a*) These are powers of entry and distress or receipt of the rents and profits and, in the case of a rentcharge held for a legal estate, power, whether taking possession or not, to create a legal term for raising the annual sum charged and all arrears thereof due or to become due together with incidental expenses. None of these powers nor any similar express power for securing or compelling payment of the annual sum charged is subject to the perpetuity rule: sub-s. 6. The power of creating a legal term is an exception to the rule that powers operate only in equity, see L. P. Act, 1925, ss. 1 (7), 8 (2).

(*b*) The statutory remedies are sufficient for enforcing payment of any rent which the property is of sufficient value to produce. Additional powers are required to ensure that the buildings which it has been agreed shall be erected on the land and upon the proper construction and maintenance of which the security will depend shall be duly completed and maintained in accordance with the covenants in that behalf. The technical diffieulties which formerly attended the granting of adequate powers for this purpose have been swept away by the L. P. Act, 1925.

The doctrine that the benefit of a covenant could not run at law with a rent: *Milnes* v. *Branch*, 5 M. & S. 411; *Randall* v. *Rigby*, 4 M. & W. 130; *Haywood* v. *Brunswick, &c., Building Society*, 8 Q. B. D. 403: is probably overruled by the L. P. Act, 1925, s. 78, where " land " includes " rent " (s. 205, ix); and the fact that an affirmative covenant (for the expenditure of money on the land) is not enforceable against the assigns of the covenantor (see *ante*, p. 354), is of little consequence having regard to the efficacy given by the Act to a right of entry annexed for any purpose to a legal rent-charge. Such a right of entry is made capable of subsisting or of being conveyed or created at law (s. 1, sub-s. (2) and is accordingly one of the rights in the Act referred to as legal estates.

S. 4 (3) of the Act enacts that all rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason, may after the commencement of the Act, be made exercisable by any person and the persons deriving title under him, but, " in regard to an estate in fee simple

with the afsd stipulons & condons & within the respective periods thereby limited for the sd respective pposes.

Power to enter and perform covenants and to satisfy the costs out of the rents.

9. The conveyance of each lot shl also reserve to the owner for the time being of the reserved rent, power, if the pchaser shl refuse or neglect specifically to pform any stipulon involving the expenditure of moy, either bfe or after he shl have ceased to have any intt in such lot, specifically to pform the same & for that ppose (if necessary) to enter upon & remain in posson & take the rents & profits of such lot until the costs & expses incurred in the execution of the power so reserved shl be satisfied (*c*).

Completion.

10. The pchase shl be completed on the —— day of —— next, at the office of the vendor's solors, Messrs. ——, at ——, at wch time & place each pchaser shl be entitled to a pper convce (*d*) of his lot or lots, to be prepared by & at the expse of the pchaser (*e*), & the vendor shl be entitled to a duplicate throf (if required) to be prepared by him at the pchaser's expse. *Add condon as to munimts*, p. 371, f. **2** (*f*), *and other usual conditions.*

Schedule of Stipulations (*g*).

(not being a rent-charge held for a legal estate) only within the period authorised by the rule relating to perpetuities." This enactment as worded is so obscure as to be unintelligible so far as regards the reference therein to a legal rent-charge; but the meaning is made clear if the words "annexed to" are read into it after the words in parenthesis "not being." Thus read it is confirmed that a right of entry annexed to a legal rent-charge subsists as a legal right running with and enforceable by the owner of the rent-charge so as to be exercisable by the owner for the time being without regard to the rule against perpetuities.

As to the creation of a rent-charge by way of indemnity against another rent-charge, see *post*, p. 400.

(*c*) Power to charge the property with the costs and expenses incurred is sometimes substituted. See the form, *ante*, p. 370.

(*d*) A transfer of registered land in consideration of a rent may be made by the registered proprietor in any form legally sufficient for the purpose of which the registrar may approve: Rule 107.

(*e*) The ordinary practice, that the conveyance should be prepared by the purchaser, ought not, it is considered, to be departed from in this case, as is the practice in some places.

Custody of deeds.

(*f*) It is the usual practice in sales of land on a rent for the vendor to retain the deeds, but he has no right to do so: *Whitfield* v. *Fausset*, 1 Ves. at 394; unless he retains part of the land to which they relate. In this case a condition as to their custody should therefore be inserted.

(*g*) These will include, among others, a stipulation that each purchaser shall within a specified time erect, cover in, and completely finish and make fit for habitation one or more houses of minimum value: see forms of restrictions, *ante*, pp. 361 *et seq.*

XVI.

Sales subject to or with Option to Commute Purchase-money into Rent-charges (*a*).

1. Each lot wch is subjt with other lots to the same rent-charge is sold & will be conveyed subjt to the apportioned pt of the rent-charge to be borne by that lot as stated in the parlars. Sale in lots subject to apportionment

(*a*) It was formerly the practice, where land subject to a rent-charge affecting the whole or part of the land was offered for sale in lots at apportioned rents, to make elaborate provision for securing the payment by the respective purchasers of the portions of the rent-charge to be borne and paid by them respectively. Mutual covenants were required to be entered into by them, usually by a separate deed, for payment and indemnity against non-payment of their respective portions, and cross powers of distress and entry were required to be given by them in order to secure to each of them the means of recovering any portion which in addition to his own he might, owing to the default of the other or others of them, be called upon to pay As regards unsold lots it was usually provided that the vendors should stand in the place of the purchaser of each such lot. Another and more efficacious method of securing the desired indemnity was to provide for the creation by each purchaser of a rent-charge equal in amount to the apportioned part of the original rent-charge to be borne by his lot, to the recovery of which new rent-charges the statutory remedies by distress and entry were made to apply.

By many practitioners the precaution was taken of restricting the operation of all such remedies by distress and entry to be given by way of indemnity and all such indemnity rent-charges so as to avoid transgressing the rule against perpetuities, and the power of distress was sometimes omitted altogether on the supposition that, being given by way of indemnity it would be invalidated by the Bills of Sale Acts. Any doubts as to the validity of powers of distress and entry already given and of indemnity rent-charges already created and not so restricted are set at rest by s. 162 of the L. P. Act, 1925, which section for removing doubts expressly declares that the rule of law relating to perpetuities does not apply and shall be deemed never to have applied thereto; and by s. 189 which provides that a power of distress given by way of indemnity against a rent or any part thereof payable in respect of any land, or against the breach of any covenant or condition in relation to land, is not and shall not be deemed ever to have been a bill of sale within the meaning of the Bills of Sale Acts.

Express covenants for payment and indemnity, express powers of distress and entry and the creation of indemnity rent-charges for the purpose of attracting the corresponding statutory powers can now rarely be required. The requisite covenants for payment and indemnity on the part of the respective purchasers and on the part of the vendor conveying as beneficial owner are implied by s. 77 of the L. P. Act, 1925 (see sub-s. 1, B. and Second Schedule, Part VIII). Paragraph B. applies to any conveyance for valuable consideration, other than a mortgage, of part of land affected by a rent-charge, subject to a part of that rent-charge which has been or is

of rent-charges affecting several lots.

In the conveyce to the pchaser of each such lot the rent-charge, if at the date of the conveyce any pt of the ppty affected by the rent-charge is retained by the vendors, shl be expressed to be apportioned accordgly, & the proper express or implied statutory covts for securg paymt & indemnity agst non-paymt of the apportioned pts of the rent-charge shl be entered into by the pchaser, in respt of the lot pchased by him,

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by that conveyance apportioned (but in either case without the consent of the owner of the rent-charge) in respect of the land conveyed. The primary provision, it will be observed, is that in order to imply the usual covenants for payment and indemnity on the part of the vendor in respect of property retained by him he must convey or be expressed to convey as beneficial owner (Paragraph B. (ii)). This is supplemented by sub-s. 4 which provides in effect that any covenant which would be implied by a person so conveying may *by express reference to s.* 77 be implied with or without variation in *any* conveyance by a person who "conveys or is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or as receiver of a defective, or under an order of the court." The benefit of all such implied covenants is by sub-s. 5 annexed to the estate or interest of the implied covenantee so as to run with and pass without express assignment to every subsequent owner of the land intended to be protected in like manner as if it were a covenant for title.

The requisite remedies by way of distress and entry are implied by s. 190 of the L. P. Act, 1925, where the rent-charge or a part thereof is in the conveyance to the purchaser expressed to be apportioned between the land conveyed or any part thereof and the land retained or any part thereof. Trustees and others in a fiduciary capacity can take advantage of the section (sub-s. 5) which applies so far as a contrary intention is not expressed in the conveyance whereby the rent or any part thereof is expressed to be apportioned (sub-s. 6). It is sufficient, therefore, to stipulate as in the condition in the text that the necessary apportionment shall be made in the conveyance to each purchaser and that the section shall apply.

It is expressly provided (sub-s. 8) that the rule relating to perpetuities does not affect the powers or remedies conferred by the section nor any like powers or remedies expressly conferred. The statutory remedies, it will be observed, are conferred (sub-s. 2) upon the owner for the time being of any other land affected by the rent-charge and are thus annexed, not to the rent-charge, but to the other land. The right of entry given by the section is not, therefore, a legal interest. It is an equitable interest affecting a legal estate, and but for the express provision of sub-s. 8 would necessarily fall within the prohibition against the exercise of rights of entry beyond the period authorised by the rule relating to perpetuities contained in s. 4 (3). Possibly the exception to the general rule introduced by the words in parenthesis in the last mentioned section which seem to have been intended to meet the case of a right of entry "annexed to" a rent-charge held for a legal estate (see *ante*, p. 377, note (*b*)) was also intended to meet the case of a right of entry annexed to land by way of indemnity against a rent-charge.

& by the vendors in respt of the ppty (if any) affected by the rent-charge & retained by them; and the provisions of s. 190 of the L. P. Act, 1925, shl apply to each such conveyce.

The same. Fuller form with variations.

2. Lots 1 & 2 are subjt under one convce to an entire rent-charge of £15, & lots 3, 4, & 5 are subjt under one convce to an entire rent-charge of £20, & each of the sd lots is sold & will be conveyed subjt to the paymt by the pchaser of such apportioned pt of the rent-charge affectg the same as is to be borne by that lot as stated in the parlars & to the covts & provons contd in the deed creatg the rent-charge so far as they affect that lot. No legal apportionmt of the respective rents has been or will be made; but in the convce to the pchaser of each of the sd lots the rent-charge affectg the same, if at the date of the convce any pt of the ppty affected by the same rent-charge is retained by the vendors shl be expressed to be apportioned as btn the parties to the convce & their respective successors in title in the several amounts above stated; & the proper express or implied statutory covts for securg paymt & indemnity agst non-paymt of the apportioned pts of the rent-charge shl be entered into by the pchaser in respt of the lot pchased by him & by the vendors in respt of the ppty if any affected by the rent-charge & retained by them; & the provisions of s. 190 of the L. P. Act, 1925, shl apply to each such convce.

Sale in lots. Entire rent to be borne by one lot.

3. Lots 1, 2, & 3 are, with other ppty of the vendors, subjt to a yrly rent of £——, the whole of wch is to be borne by lot 1. The sd sevl lots shl be conveyed accordgly as to lot 1 subjt to or charged with (*b*), & as to each of lots 2 & 3 discharged from (*b*) the whole of the sd yearly rent, wch, if & so far as may be necessary for implying the statutory remedies conferred by s. 190 of the L. P. Act, 1925, shl in the convce of any such lot be expressed to be charged exclusvly on lot 1 in exoneron of the other lots & ppty liable thereto.

Indemnity on sale in lots against rent not actually paid (*c*).

4. The pchasers shl be precluded from requirg any informon beyond what is afforded by the abstracted documts resptg a rent-charge of £—— p.a., wch is stated to have been charged on the ppty in the yr —— for a charitable ppose, but wch is supposed not to have been pd or claimed for many yrs. The

(*b*) See L. P. Act, 1925, s. 77 (2).

(*c*) A quit-rent issuing out of freeholds: *De Beauvoir* v. *Owen*, 16 M. & W. 547; 5 Ex. 866; see *Howitt* v. *Harrington*, [1893] 2 Ch. 497; may be extinguished by non-payment, but mere non-payment is not sufficient to prove non-liability: *Adnam* v. *Sandwich*, 2 Q. B. D. 485.

liability (if any) to this rent-charge shl be assumed by the pchaser of lot —— in exoneron of the other lots, & such pchaser shl (if required) join in the convces of the other lots (at the expse of the respective pchasers requirg the same) in order to covt for their indemnity agst the sd rent-charge, & the pchasers of the other lots shl be satisfied with that covt, & shl not require any other indemnity against the same, & inasmuch as the vendors have entered into covts with the pchasers at a former sale of ppty held under the same title for their indemnity against the sd rent-charge, the pchaser of lot —— shl also indemnify the vendors against those covts, such respective indemnities to be prepared by & at the expse of the respective psons entitled to the benefit throf. In the event of any lot or lots not being sold at the psnt sale the vendors shl stand in the place of the pchaser or pchasers throf for the ppose of this condon.

Rent not paid by vendors. Indemnity.

5. Lots —— are or were formerly subjt with other ppty to a yrly rent of £——, wch has never been pd by the vendors. The respective pchasers shl be satisfied with this statemt, & shl not require any indemnity in respt of the sd rent or any further informon in relon thto.

Indemnity of vendors against liability under covenants.

6. Each pchaser of lots —— & —— shl in the convce to him enter into the proper express or implied statutory covts (*a*) for the indemnity of the vendors [& the este of their testor] as from the complon of his pchase against the apportioned yrly rent to wch the ppty comprised in the lot pchased by him is subjt as mentd in the parlars, & against the covts & condons as to bldg on & user of such ppty resply & orwise contd in the deed by wch the sd rent was created *or*, "against the rents, covts, & condons mentd in No. —— of these condons," & shl in his convce by way of further indemnity (if required) grt to the vendors a new rent of eql value with the sd apportioned yrly rent to be charged upon & issuing out of the ppty pchased by him with full & pper powers of distress over & of entry on & perception of profits of such ppty for enforcing the sd indemnity, & shl (if required) execute & deliver to the vendors a duplicate of the convce, to be prepared & stamped by & at the expse of the vendors (*b*).

(*a*) S. 77 (1), paragraph B., of the L. P. Act, 1925, applies to the case of land sold subject to part of a rent-charge previously apportioned.

(*b*) S. 190 of the L. P. Act, 1925, would not apply in this case.

7. There is a rent of £—— p.a. charged on the premes. The owner of this rent will join in the convce to the pchaser for the ppose of releasg the same ; but no title shl be required to be shown thto other than the convce of the same to the psnt owner. Rent to be released. Title.

8. Lot —— is subjt to an apportioned rent of £——, pt of a rent of £—— created by a deed, dated, &c. but no legal apportnmt has been or shl be required to be made nor shl any objection or requon be made on this acct. Former apportionment.

9. By the will of a former owner contributory rents of £—— & £—— were directed to be pd by the owners of other ppties as apportioned pts of a rent of £—— charged upon lot —— & such other ppties. The pchaser of lot —— shl be satisfied with the apportionmt or division so made of the rent of £——, & shl not require any other apportnmt throf or any indemnity in respt of the portions payable out of the other ppties. Former apportionment by will.

10. The sevl lots are subjt to various provons as to the apportionmt of or indemnity against rents affectg the same or some pt or pts throf togr with other ppty ; but none of these matters shl be made the ground of any objection or requon, & the respective pchasers shl take subjt thto in all respts, & it shl be assumed that all the sd provons as far as necy have been duly observed & pformed up to the complon of the pchase of the respive lots. Former apportionments and indemnities. General provision.

11. No objection or requon shl be made on the ground that any lot or any pt throf is, either alone or with other ppty, subjt to any overridg rent or rents, or any covts or condons other than those subjt to wch the same is sold, or on the ground of the absence or insufficiency of any indemnity against any such overridg rents, covts, or condons, & the pchaser shl not call for any informon resptg the origin or creation throf or orwise in relon thto beyond what may appear in the abstract, but shl be satisfied with a statutory declaron to be made (if required) at his expse that no claim has ever been made against the vendors in respt of any such rent, covts, or condons. Overriding rents. General exclusion of objections.

12. No pchaser shl require the deed creatg any rent mentd in the parlars or these condons to be abstracted or produced, or any informon (except such as may be in the vendors' posson) as to the contents throf or the psons by whom the rent is pd or the ppty charged thwith or the covts or condons contd in the Bar of requisitions. Stringent clause.

deed creatg the same or orwise in relon thto or any indemnity against such rents, covts, or condons.

As to lot not sold.

13. If any lot is not sold the vendors shl stand in the place of the pchaser throf for the ppose of these condons.

Evidence of performance of covenants (*a*).

14. The rect for the last paymt of the rent charged on any lot wch shl have accrued due previously to the complon of the pchase, by whomsr signed, shl be conclusive evidce of the pformce & observce of all covts & condons to wch that lot is subjt, or of the effectual waiver of any breach of any such covt or condon up to the complon of the pchase, & no evidce shl be required of the title or authority of the pson or psons giving the rect.

Option to commute part of purchase-money into rent-charge.

15. The pchaser of any lot shl, on giving notice in writg of his desire so to do within —— weeks of the day of sale, have the option of commutg one third [*or, as the case may be*] of his pchase-moy into a perpetual rent-charge at the rate of £5 p.c. p.a. on that pt of his pchase-moy: the rent-charge to commence from the —— day of ——, & to be payable half-yrly, in wch case he shl within —— months from that day accdg to position, plans, elevons, & materials to be approved by the vendors or their surveyor, erect & complete on the lot so charged houses or bldgs of sufft value to produce an annual rental of not less than three times the sd rent-charge, & he shl not be entitled to a convce of that lot unless & until the sd houses or bldgs shl have been so erected & completed to the satisfon of the vendors' surveyor (*b*). The convce of every lot pchased subjt to a rent-charge & a duplicate throf shl be prepared by the vendors' solors at the expse of the pchaser, & shl incorporate the statutory powers & remedies for compelling paymt of such rent-charge, & shl contain full & pper covts & provons framed so as to bind the pchaser & the psons deriving title under him, as far as may be, to maintain, repair, & rebuild whenever necy the houses or bldgs to be erected psuant to the last condon, & against the carrying on of any noisome or offensive trade or business on the premes. The pchaser of any such lot may have the same conveyed to him by sevl convces at his expse, such a proportion of the rent-charge being reserved in each convce as the vendors shl think fit.

(*a*) The provisions as to this in the L. P. Act, 1925, s. 45 (2) and (3) (see *ante*, p. 237), only apply to leases and underleases.

(*b*) See *ante*, p. 365, note (*c*).

XVII.

Business *as* Going Concern (*c*).

Manufacturing business.

1. *Usual condons except as follows:* The business & works will be continued & carried on by the vendors for their own benefit & at their own risk & cost up to the day fixed for complon of the pchase, & in the event of the actual complon being delayed beyond that day will be continued by them from that day up to the actual complon throf (*d*) for the benefit of the pchaser & at his risk & cost (*e*) in all respts (includg the manager's salary). The pchaser shl also pchase all the fixed & movable machinery, engines, tackle, waggons, carts, horses, & other live & dead stock, & plant, chattels, & effects wch shl be in or upon the premes or in use in connection thwith on the day fixed for complon, togr with the book debts owing to the sd business at that date at their fair value, to be ascertained by the valuon, of two appraisers (one to be appted by the vendors & the other by the pchaser) or their umpire in the usual mner. The pchaser shl pay intt on his pchase-moy & the amt of the afsd valuon or the balance for the time being remaing unpd at the rate of £5 p.c. p.a. as from the day fixed for complon until the same shl be pd. Upon paymt of the pchase-moy togr with the amt of the sd valuon & the intt due under this condon the pchaser shl be entitled to posson or to the rect of the profits of the sd business & works, & shl pay, bear, & discharge & indemnify the vendors against all rates, taxes, & other outgoings & losses (includg all liabilities & outgoings arisg out of any uncompleted contracts or engagemts) as from the day fixed for complon, & the profits & outgoings

(*c*) Compare the form on a sale by private contract, *post*, pp. 421 *et seq.*, and see the notes thereto.

(*d*) On the sale of a public house, the vendor usually agrees to carry on the business on behalf of the purchaser "until the transfer Sessions wch shl happen next after the day of actual complon." See *ante*, p. 298, note (*c*).

(*e*) Apart from express provision the vendors as trustees for the purchaser (see *post*, p. 393), would fail in their duty if they allowed the business to lapse, and would be justified in continuing it until actual completion and at the purchaser's risk provided that they informed the purchaser with reasonable promptitude of what they were doing: *Golden Bread Co.* v. *Hemmings*, [1922] 1 Ch. 162. See *Adams* v. *Morgan & Co.*, [1924] 1 K. B. 751.

shl (if necy) be apportioned. Until the actual complon of the pchase the business shl, except as to the approprion of profits & liability for outgoings & losses, be carried on under the same style & firm & in the same mner & the vendors shl retain the same posson & ppty in the premes & have the same right of controllg the conduct & managemt throf as they would have had if the same had not been sold.

Another form.

2. The whole of the ppty, with the goodwill of the business, is sold as a going concern, the pchaser takg upon himself the debts & liabilities of the vendor in pt paymt of the pchase-moy, as hinar mentd. All fixed & movable machinery, engines, plant, tools, live & dead stock, horses, carts, chattels & effects in use by the vendor in connection with the sd business on the day fixed for complon (including the trade & tenants' fixtures in the shop & warehouse in —— Street, & the stk of manufactured articles at the factory, & in the shop & warehouse) shl be pchased & pd for by the pchaser at a valuon. The sale shl also include the book & other debts owing to the vendor, & the benefit (*a*) of all orders & contracts remaing unexecuted at the time fixed for the complon of the sale, wch shl resply in like mner be pd for by the pchaser at a valuon (due allowce being made for bad & doubtful debts). The amt of the debts owing by, & other liabilities of the vendor as they may exist at the time fixed for complon (the sd amt in case of difference to be ascertained by valuon), shl be allowed in reduction of the pchase-moy. The pchaser shl take upon himself, & indemnify & secure the vendor against the sd orders, contracts, debts & liabilities (the parlars throf being specified in a list or schdle), both by his personal covt, & by a mtge & deposit of the title-deeds of the ppty sold, with pper powers, includg power in case of default to take posson & sell the ppty (exclusive of chattels psonal within the Bills of Sale Acts) the mtge & indemnity to be prepared by & at the expse of the vendor.

(*a*) See *Bowater* v. *Mirror of Life Co.*, 50 W. R. 381.

XVIII.

Newspaper.

Add to the usual condons as to biddgs, deposit, complon, & intt, the following special conditions—

1. The vendors will deliver to the pchaser a certified copy of the last entry made psuant to the Newspaper Libel and Registration Act, 1881 (*b*), in the register of newspaper proptors relatg to the sd newspaper, but no abstract or further evidce of title shl be required, & the afsd copy shl be conclusive evidce of the vendors' title.

2. The newspaper under its psnt name (*c*) will be continued to be published (*d*) as htofore by or on behalf of the psnt proptors at their risk & for their benefit until & inclusive of the publicon of the number or edition for the —— day of ——, from wch time the pchaser shl be entitled to print & publish or continue the same.

3. On paymt of the balance of the pchase-moy at the time & place above appted the vendors will (if required) execute to the pchaser a pper assignmt to be prepared by & at the expse of the pchaser.

4. Immedly after complon the pchaser shl make a return psuant to the sd Act to the Registry Office showing that the vendors have ceased to be proptors, & that the pchaser has become the proptor of the sd newspaper, & shl duly comply with all the requiremts of the law with respt to the printg & publicon of the sd newspaper in continuon of the publicon throf by the vendors, & the pchaser shl not be entitled to publish the sd newspaper until the sd return has been duly made & registered & the other requiremts afsd have been duly complied with.

5. If the pchaser shl fail to comply with these condons his deposit shl thrupon be absolly forfeited to the vendors, who

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(*b*) See Newspaper Libel, &c., Act, 1881, ss. 8 and 9. As to the rights of a proprietor to sue in respect of copyright, see Copyright Act, 1911, s. 6: *Birn Bros., Ltd.* v. *Keene & Co.*, [1918] 2 Ch. 281.

(*c*) As to similarity of names see *Borthwick* v. *The Evening Post*, 37 Ch. D. 449.

(*d*) As to the meaning of "published," see *McFarlane* v. *Hulton*, [1899] 1 Ch. 884.

shl have the option either to discontinue the sd newspaper or to continue the same either immedly or at any time afterwards, & either temporarily or permanently, & in case they shl so continue the same they shl be at liberty to resell the same at such time & place subjt to such condons & in such mner as they shl think fit, & any deficiency in price on the resale & all expses attendg the same togr with all losses (if any) incurred in carrying on the newspaper in the meantime shl be immedly made good by the defaulter at the psnt sale or shl be recoverable as & for liquidated damages, but on the other hand the vendors shl be entitled to retain for their own benefit all profits resultg from carrying on the sd newspaper until the resale.

CONTRACTS FOR SALE (*a*).

I.

AGREEMENT *for* SALE *of Freeholds with usual* PROVISIONS. VARIATIONS *in note where* TITLE ACCEPTED, *where* PART *of* PURCHASE-MONEY *to remain on* MORTGAGE *or the whole to be payable by* INSTALMENTS, *&c., and where the* LAND *is* REGISTERED.

AN AGRMT, made the —— day of —— betn A., of, &c. [as agent for & on behalf of C., of, &c.] hrinar called the Parties.

(*a*) See forms of Contract, 1 Williams, V. & P., 3rd ed., 725. See the forms of general and special conditions and notes thereto under the head "CONDITIONS OF SALE," also the note, *ante*, p. 236 as to the statutory provisions. Throughout the following precedents references to "this agreement" and to the "date of this agreement" must be substituted in the forms taken from "CONDITIONS OF SALE" for references to the particulars and conditions of sale and to the day of sale respectively wherever such references occur. Without further alteration special conditions which would be applicable to a sale by public auction will be equally applicable to a sale by private treaty. The general scheme of the latter form of sale does not differ substantially from that of the former, the general conditions of which are very commonly, notwithstanding the stringency of some of them, submitted to by purchasers on sales by private treaty. There is, however, this difference, that a purchaser does not enter into a contract for sale in open competition with other intending purchasers. He has the opportunity of making his own terms with the vendor, and may require that the conditions usual on sales by public auction shall be so far modified as to place him upon an equal footing with the vendor as regards deposit and otherwise in case of any difficulty or dispute arising as to title, conveyance, or evidence of title. Occasionally it is found convenient where there are doubtful points in the title to submit it to the purchaser before the contract is signed. For a form of agreement for sale by private contract referring to printed particulars and conditions of sale, see *ante*, p. 264, note. For variations for sales by trustees or mortgagees, see CONDITIONS OF SALE, pp. 255, 309. For form Frame of contracts for sale.

vendor) of the one pt, & B., of, &c. (hrinar called the pchaser) of the other pt.

Agreement for sale.

1. The vendor agrees to sell, & the pchaser agrees to pchase, for the sum of £—— All, &c., *Parcels in full or by reference to*

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of contract for sale by a tenant for life, see *post*, Precedents V. and VI., and see the notes to those precedents.

As to purchase by tenant for life or trustees.

Under the S. L. Act, 1925, s. 75 (2), the investment of capital money is under the control of the tenant for life, who is therefore the proper person to enter into a contract of purchase. This precedent is adapted without alteration to the case where the purchase is made by a tenant for life, except that if the money is in Court, the contract should be made subject to being sanctioned by the Court; or (with the substitution of the plural) to the case of a purchase by trustees.

As to stamp on contracts for sale.

The stamp on a contract for sale is 6*d.* if under hand only, or 10*s.* if by deed, under the headings "agreement" and "deed" in the first schedule to the Stamp Act, 1891, but subject to the provisions of s. 59 of that Act as amended by the Rev. Act, 1909, s. 7. The object of s. 59 of the Act of 1891 is to impose the *ad valorem* sale duty on the contract in cases in which (as in *I. R. Commrs.* v. *Angus*, 23 Q. B. D. 579) the contract may not require an actual conveyance to perfect it. Accordingly by sub-s. 1 of that section as amended by the Act of 1909, s. 7, the contract is made liable to the duty where the subject-matter consists (a) of a merely *equitable* estate or interest whether in land or any other property, or (b) of any estate or interest in any property, with shortly stated the following exceptions, namely, land, property situate out of the United Kingdom, goods, marketable securities, and ships. See these exceptions discussed with the subject generally, *post*, p. 1125, note. But the contract if stamped only with the fixed duty of 6*d.* or 10*s.*, as the case may be, is to be deemed duly stamped for the purpose of enforcing specific performance or recovering damages for its breach (sub-s. 4); and, in the like case, it is to be regarded as duly stamped if a conveyance is presented for stamping with the *ad valorem* duty within six months, or such longer period as the commissioners may think reasonable (sub-s. 5). If the *ad valorem* duty is paid on the contract, provision is made for denoting it on or transferring it to the conveyance (sub-s. 3). In case there is a sub-sale before the conveyance the sub-contract is to be charged with the *ad valorem* duty on the excess consideration (if any), or otherwise with the fixed duty (sub-s. 2). In the event of the contract being rescinded or not carried into effect, the *ad valorem* duty is to be returned (sub-s. 6). It will be observed that s. 59 does not apply to a legal estate in land; and it is believed that it is the practice in general (at any rate on sales by auction) to put only a 6*d.* stamp on the contract even in cases coming within that enactment.

As to the evidence to be furnished on adjudication, where a party claims that an agreement is exempt from *ad valorem* duty, see the circular of the Solicitor of Inland Revenue of October, 1897, Current Index, 1897, p. LXXXIII.

The Inland Revenue authorities decline to allow an unstamped contract for sale to be stamped with 6*d.* on payment of the penalty, if f. 12, p. 253, is in the contract. See further as to stamps on particular contracts, *post passim.*

schedule & plan, see CONVEYANCES ON SALE, PARCELS, pp. 480 *et seq.*, with the appurts throf (*a*) for an este in fee simple absolute in posson free from [land tax & tithe rent-charge & from] all incumbces (*b*) [other than & except the lease *or* "the sevl leases & tenancies" & the rights easemts & restrictive covts, *or as the case may be,* mentd in the schdle hto as affecting the same or pt or pts throf resply (*c*)].

[**2.** *Provision as to timber, fixtures, &c., if any, to be taken at a valuon,* p. 296.]

[*Provision as to insurance,* p. 333, f. **5**, *saying* "pending complon."]

Payment of purchase-money and completion (*d*).

3. THE pchaser havg pd to Messrs. ——, the vendor's solors, as stakeholders *or*, "into the —— Bank, in the joint names of, &c., as stakeholders, but at the risk of the pchaser," the

(*a*) As to the meaning of "appurtenances," see *Bolton* v. *Bolton*, 11 Ch. D. 968; *Re Peck & London School Board*, [1893] 2 Ch. 315; *Re Walmsley & Shaw's Contract*, [1917] 1 Ch. 93; and as to the proper form of conveyance, see *post*, p. 497.

Implied condition as to incumbrances.

(*b*) In the absence of special stipulation, a contract for the sale of land means that the vendor is to convey the fee simple free from incumbrances: *Hughes* v. *Parker*, 8 M. & W. 244; *Phillips* v. *Caldcleugh*, L. R. 4 Q. B. 159; *Worthington* v. *Warrington*, 5 C. B. at p. 644; *Ungley* v. *Ungley*, 5 Ch. D. at p. 891; *Hone* v. *Gakstatter*, 53 Sol. J. 286; and see Dart, 7th ed., 124.

(*c*) See *ante*, p. 249, f. 5, and notes thereto. If convenient the lease or right subject to which the property is sold may be mentioned here in the body of the contract by reference to the deed creating it. It the property is sold subject to a mortgage which is not intended to be discharged say "except a mtge [registered charge] for £—— & intt, &c.," as in the note, *ante*, at p. 251. If reservations are to be made or conditions imposed say "except as hrinar mentd."

Part of purchase money to be left on mortgage.

(*d*) Where part of the purchase-money is to be allowed to remain on mortgage, the following provisions as to payment, completion, and interest may be substituted for those in the text: "The pchase shl be completed on the —— day of —— next at the office at —— of Messrs. ——, the vendor's solors. The sum of £——, pt of the sd pchase-moy, havg been already pd by the pchaser to, &c., as a deposit, the balance throf shl be pd by the pchaser to the vendor in mner followg, namely, the sum of £——, pt throf, with intt thron (in the event of the complon of the pchase being delayed) at the rate of £—— p.c. p.a., from the sd —— day of —— until the date of actual complon, shl be pd upon the exon of the assurce of the premes; and the paymt of the remr throf, with intt at the rate of £—— p.c. p.a., from the time appted for complon of the pchase, payable half-yrly, shl be secd on the ppty by a

sum of £—— pt of the sd pchase-moy as a deposit (*a*) on the exon of this agrmt shl pay the residue of the sd pchase-moy [togr with the amt of the afsd valuon] to the vendor, or as he shl direct, on the —— day of —— next at the office of the vendor's solors, Messrs. —— at ——, at wch time & place the pchase shl be completed (*b*).

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mtge by demise [charge by way of legal mtge], to be prepared by the vendor at the expse of the pchaser, & to contain such powers & provons, to be in such form as the vendor shl reasbly require, & to be exted immedly after the exon of the assurce of the premes." If the land is registered, say: "shl be secd on the ppty by a mtge, &c.," as in form 23, p. 322.

Premises to be insured.

"[And the messe & bldgs upon the premes shl forthwith be insured against loss by fire by the pchaser, or, in case of default on his pt, by the vendor, at the expse of the pchaser, in the sum of £—— at the least, in an office to be approved of by the vendor.]"

Purchase money payable by instalments secured by mortgage.

Where the whole of the purchase-money is to be payable by instalments secured by mortgage, continue after provision for completion as follows: "The pchase-moy, with intt thron or on the unpd pt thof at the rate of £—— p.c. p.a. from the —— day of ——, shl be pd by —— equal half-yrly instalmts of ppal amtg to £—— each, payable on the —— day of —— & the —— day of —— in each yr, the first instalmt to be pd on the sd —— day of ——, with the addon to each instalmt of the intt on the portion of the pchase-moy remaing unpd, but if the pchaser shl make default in paymt of any of such instalmts of ppal or intt or any pt throf for 30 days after the same shl have become due, the whole of the unpd instalmts of the sd pchase-moy, with the intt thron, shl become immedly due & payable, & the paymt of the unpd instalmts & intt shl be secd, *by mtge, &c., as above.*"

See *ante*, p. 334, note (*c*), and cf. forms 6 and 7, *ante*, pp. 334 *et seq.*

As to payment of deposit.

(*a*) Payment of a deposit is a matter of bargain, not an established practice. As to the importance of the deposit being paid to a stakeholder, see *Ellis* v. *Goulton*, [1893] 1 Q. B. 350, and *ante*, p. 246, note (*d*). If the deposit is paid to a person as stakeholder, add a receipt by him to that effect at the foot of the contract. If the deposit is paid into a bank, add at the end of the clause, "but any intt wch may be payable by the sd bank on the deposit shl on complon be pd to the pchaser;" and at the beginning of the clause as to conveyance, insert "upon the sd deposit being released by the pchaser &."

(*b*) Where the land is registered, the purchaser should lodge a caution; see *ante*, p. 244. As to land in a compulsory district and as to land in Yorkshire, see *ante*, p. 334.

4. *Posson & intt*, p. 247, f. **4**, or 269, f. **4** (*c*).

5. The counterpart of the sd lease *or* "counterparts or copies of the leases or written agrmts (if any) with the tenants," &c., & copies of the deed, &c., as in f. **5**, p. 249, having been produced to the pchaser's solor, the pchaser shl be deemed to

Production of documents. Purchaser

(*c*) Upon a sale by private treaty and sometimes in the case of sales by auction special provisions as to possession and interest may be required. In framing these regard must be had to the rule in equity that, in the absence of express stipulation, the right of the purchaser to the rents and profits and his correlative liability to pay interest on the purchase-money date from the time at which the contract ought to be completed and is to be considered as a concluded contract, that is to say, from the date (if any) fixed by the contract for completion, whether the whole of the purchase-money is then payable or not: *Att.-Gen.* v. *Dean of Christ Church*, 13 Sim. 214; *Birch* v. *Joy*, 3 H. L. C. 565; or if the contract being an open one, no time is fixed, then from the time when a good title is first shown: *Bennett* v. *Stone*, [1903] 1 Ch. at p. 524; see *Re Cary-Elwes*, [1906] 2 Ch. at p. 148; or the purchaser takes possession: *Ballard* v. *Shutt*, 15 Ch. D. 122; *Rhys* v. *Dare Valley Rly. Co.*, L. R. 19 Eq. 93; *Fletcher* v. *Lancashire & Yorkshire Rly. Co.*, [1902] 1 Ch. 901; *Re Duke of Northumberland & Tynemouth Corpn.*, [1909] 2 K. B. at p. 383; *Allen* v. *I. R. Commrs.*, [1914] 2 K. B. 327. From that time the vendor and purchaser change characters in equity, the former becoming the owner of the purchase-money, and the latter the owner of the property: *Birch* v. *Joy*, *sup.*; *Bennett* v. *Stone*, *sup.*; and the accounts will be taken on this footing upon completion.

Purchaser to be let into possession before completion.

An agreement which appears to prevent the application of this rule, *e.g.* an agreement that the purchaser shall enter and remain in possession after the date fixed for completion, without any liability to pay interest on the purchase-money, will be examined in equity by aid of the rule and enforced or not according to circumstances: *Birch* v. *Joy*, *sup.*; but an agreement under which the purchaser is to be at liberty to enter into possession before the date fixed for completion, rent free and without paying interest on the purchase-money prior to that date, is not within the mischief of the rule; and a purchaser entering into or retaining possession under an agreement fixing a day for completion but silent as to interest, does not render himself liable to the payment of interest before the principal is payable, namely, the date fixed for completion: *Att.-Gen.* v. *Dean of Christ Church*, 13 Sim. 214.

In a qualified sense the vendor is trustee for the purchaser from the date of the contract, from which date the property is at the purchaser's risk: *Lysaght* v. *Edwards*, 2 Ch. D. 499, and see Williams, V. & P., 3rd ed., 481 *et seq.*; and a "valid" contract as defined by Jessel, M.R., in the case last cited effects an equitable conversion of the property and purchase-money for purposes of devolution (see 2 Ch. D. at p. 507); but the vendor is not, from the inception of the contract, a trustee of the rents and profits for the purchaser: *Rayner* v. *Preston*, 18 Ch. D. at p. 6. He retains a substantial interest in the property until completion, and is entitled to remain in actual possession until completion in order to protect that interest: *Shaw* v. *Foster*, L. R. 5 H. L. at pp. 338, 349, 356; *Golden*

to have notice of contents, &c. (*a*).

have full notice of the contents throf & of the nature & extent of the rights affecting the ppty (whether resply of a usual character or not) [& of the terms of the tenancies] notwithstdg any partial, incomplete or inaccurate statemt hrin of such contents or of the effect throf [or of the terms of the tenancies] & of the state of the ppty as to repairs, insce, party-walls, & all other matters.

Reservations and restrictions.

[*Reservations and restrictive conditions in favour of vendor.* See SPECIAL CONDITIONS RESERVATIONS, pp. 349 *et seq.*; *and* RESTRICTIONS, pp. 353 *et seq.*, *saying in each case* "the ppty is sold subjt to" *instead of* "offered for sale," *and in the case of restrictions adding in their appropriate places such further provisions selected from that heading & adapted to the case of a sale by private contract as the case may require* (*b*).]

Bread Co. v. *Hemmings*, [1922] 1 Ch. 162, and see *Central Trust & Safe Deposit Co.* v. *Snider*, [1916] 1 A. C. 266, at p. 272. The trusteeship in fact remains to be confirmed by the completion or negatived by the rescission of the contract by relation back after the event: *Ridout* v. *Fowler*, [1904] 1 Ch. 658, affirmed [1904] 2 Ch. 93.

The following form is appropriate to the case of property which is in hand and unproductive: "The pchaser shl be at liberty at any time pending completion to enter into posson of the ppty, but such entry shl not prejudice or affect the rights & liabilities of the pties hto further or orwise than as hrin expressly provd, & shl not be deemed to be an acceptce by the pchaser of the title, or a waiver of any objection or requon which he may then, or, but for such entry, might thrafter have made in respt of the title or orwise. In the event of such posson being taken, the pchaser shl discharge all current outgoings (other than [rents] rates & taxes up to the time fixed for complon) but such outgoings so discharged by the pchaser shl, if the contract shl be subsequently avoided, be refunded to him by the vendor." Cf. the forms, *post*, pp. 407, 426.

As to possession taken by the purchaser amounting to an acceptance of the title, see Williams, V. & P., 3rd ed., 176, 177.

(*a*) See *ante*, p. 249, note (*a*). This condition must of course be adapted to the circumstances of the sale.

State of property.

The latter part of this provision requiring the purchaser to take with notice of the state of the property should usually be inserted whether or not there are incumbrances necessitating the insertion of the earlier part.

(*b*) It must not be forgotten that a provision expressly negativing the existence of a building scheme may sometimes be required upon a sale by private treaty: see *ante*, p. 270, note (*b*); and cf. the form, *ante*, p. 359.

6. The vendor shl (if required) (*d*) within *one week* from the date hrof, deliver or send by post to the pchaser or his solor an abstract of his title to the premes commencg, &c., *continue with the appropriate special condon as to commencemt of title,* Special Condons, pp. 299 *et seq., or for registered land,* p. 316, *adding, if required, special condons as to evidence of title such as provisions makg recitals evidence, & as to identity, expses* (*e*), *&c., as at* pp. 282 *et seq., and such as, for registered land, authority to inspect register, & priority notice as at* pp. 276 *et seq.* Abstract (*c*).

7. *Provision as to conveyance* (*f*), pp. 254 *et seq.*

8. *Provision as to covenants,* p. 255.

9. *Provision as to muniments,* pp. 370 *et seq.*

10. *Provision as to time for delivery of requisitions,* p. 257.

11. *Rescission,* pp. 258 *et seq.*

12. *Misdescription not to annul sale,* pp. 259 *et seq., and provision A, B, or C as to compensation.*

13. If the vendor [shall not deliver an abstract of his title to the pchaser, or his solr., at or before the expiration of one calendar month from the date hereof, *or*] shl not before the expiration of —— calendar months from the date hereof Avoidance of contract upon default of vendor (*g*).

(*c*) Where the title has already been submitted to and accepted by the purchaser, clauses 5, 6, 10, 11 & 12 in the text will be omitted, and the following clause inserted in lieu thereof: "The vendor's title havg been already examined & approved by the pchaser, is accepted by him witht further investigon, & the ppty havg been inspected by him, the description hrinbfe contd is admitted by him to be correct as to quantity & all other matters wch are discoverable by inspection." As to title and misdescription.

(*d*) See *Upperton* v. *Nicholson,* L. R. 6 Ch. A. 436.

(*e*) The cost of production of deeds in the hands of the mortgagees should be thrown on the vendor, see condition 10, p. 253. Sometimes this condition is extended to "any documts wch the pchaser can require to be abstracted, & wch are not in the vendor's posson." Expenses.

(*f*) See *ante,* p. 392, note (*a*).

(*g*) The following is an alternative form:—"If the counsel of the pchaser shl be of opinion that a good title cannot be made to the whole of the premes, & the defect of title is not such as is hrinbfe made the subjt of compenson, the pchaser shl not be bound to complete the pchase as to any pt to wch a good title can be made, but the contract shl at his option be wholly void, &, the sd deposit of £—— shl thrupon

deduce a good & marketable title to the premes to the satisfon of the counsel of the pchaser, or in the opinion of the Court, if applied for within such [last mentioned] period, this contract shl [in the former case be wholly void, & in the latter case shl] be voidable at the option of the pchaser, provided that such option shl be declared in writg to the vendor within one calendar month after the expiron of such [last mentioned] period, it being the intention of the parties hrto that in such [either] case time shl be of the essence of this contract, & the sd deposit of £ —— shl be returned to the pchaser, but witht any intt up to the avoidce of the contract or other compenson. [And in case the pchaser shl have entered into posson or rect of the rents of the premes, or any pt throf, he shl immedly on the avoidce of the contract, or as soon thrafter as the moys due to him, as last aforesd, shl have been duly pd & satisfied, give up posson of the premes to the vendor, & shl acct to him for the net rents & profits (if any) recd by him, after deductg outgoings ; but the pchaser, in case he shl have taken actual posson of the premes, shl not be liable to pay an occupon rent, or be entitled to any allowce on acct of outgoings or orwise in respt throf].

Incorporation of common conditions of sale of a provincial law society (*a*).

[**14.** This agrmt shl be deemed to incorporate the common form condons of the —— Law Society (a copy whrof is hrunto annexed), so far as the same are applicable to a sale by private contract, but so that in case of any variance or inconsistency the provons of this agrmt shl prevail.]

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be returned to the pchaser, [togr with all expses paid or sustained by him in the investigon of the title or orwise in respt of the psnt sale], but witht any intt up to the date of such rescission, or other compenson. [And the premes shl in such case be a secy to the pchaser for the repaymt of all such moys, with intt thrn, at the rate of £5 p.c. p.a. from the date of rescission.] Where the purchaser rescinds under a power in the contract he has a lien for his deposit: *Whitbread & Co., Ltd.* v. *Watt*, [1902] 1 Ch. 835 ; but a purchaser repudiating on the ground of want of memorandum in writing to satisfy s. 40 of the L. P. Act, 1925, cannot recover his deposit: *Monnikendam* v. *Zeanse*, [1923] 39 T. L. R. 445.

(*a*) See *Pickles* v. *Sutcliffe*, [1902] W. N. 200. For a form of agreement for sale by private contract, referring to conditions of sale by auction, see *ante*, p. 265, note.

Costs of agreement.

It is sometimes provided that the costs of the agreement shall be borne by the vendor and purchaser equally, but having regard to the Solicitors' Remuneration Order, see [1882] W. N. 358, which prescribes a fee to the

In witness whrof the sd pties [the sd A. as agent for & on behalf of the sd C., & the sd B.] have hrunto set their respective hands the day & yr above-written, *or*, "As witness the hands of the sd pties."

Signed by the above-named ——
in the presence of ——.

Schedule of incumbrances.

II.

AGREEMENT *for sale of* Leaseholds, *with usual provisions* (*b*).

AN AGRMT, made the —— day of —— betn A., of, &c. (hrinar called the vendor) of the one pt, & B., of, &c. (hrinar called the pchaser) of the other pt. Parties.

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solicitor varying with the purchase-money without reference to the items of the work, it is difficult to see how such a provision can work. In the case of sales under the Lands C. C. Acts, or any private or public Act under which the vendor's charges are paid by the purchaser, the scale of charges under the Solicitors' Remuneration Act, 1881, does not apply: see rule 11 of Schedule I., Part I. of the Order. The following clause throws the cost on the purchaser: "All the costs, charges, & expses incurred by the vendor of & relatg to the preparg, engrossg, & executg this agrmt, & the preparg & fair copyg of the abstract & deducg & verifyg the title, & the perusg, approval, & exon of the assurce & any other deeds or orwise in relation to the psnt sale shl be borne & pd by the pchaser, who shl also pay the charges of the surveyor employed by the vendor to survey & report upon the ppty," *or*, "the pchaser shl on complon pay the charges of the vendor's solors accordg to scale & the pper charges of the vendor's surveyor in relation to the sale." See note (*g*), p. 332. As to costs generally under an open contract, see the Preliminary Note, *ante*, pp. 238, 239. Costs incident to the sale are not in practice reckoned as part of the consideration for the sale.

(*b*) See *ante*, p. 389, note (*a*). In the forms taken from Conditions of Sale a reference to "this agrmt" will be substituted for the references to the particulars and conditions, and a reference to the "date of this agrmt" for the day of sale. The variations for registered land will be found at pp. 316 *et seq.*

Agreement for sale (*a*).

1. The vendor shl sell & the pchaser shl pchase for the sum of £—— All that leasehd, &c., *Parcels, by a description shortened from the lease*, with their appurts, as the same are held for the residue of a term of —— yrs, commencg from the —— day of ——, grted by a lease [underlease] dated, &c., at the yrly rent of £——, & subjt to the lessees' covts & condons in the sd lease contd. And subjt also to the sevl underleases & tenancies mentd in the schdle hto as affecting the same or pt or pts throf resply (*b*) but orwise free from incumbces.

[**2.** *Provisions as to valuon of fixtures, &c.*, p. 297.]

[*Provision as to insurance*, p. 333, f. **5**, *saying* "pending completion."]

3. *Paymt of pchase-moy & complon*, p. 391.

4. *Possession & intt*, p. 247, f. **4**, or p. 269, f. **4** (*c*).

Production of lease, &c. Purchaser to have notice of contents, &c. (*d*).

5. The [under] lease under wch the ppty is held or a copy thof, & counterpts or copies of the leases to & agrmts with the tenants havg been already produced to the pchaser's solor, the purchaser shl be deemed to pchase with full notice of the contents thof [& of the nature & extent of the rights affecting the ppty (whether resply of a usual character or not) & of the terms of the tenancies notwithstdg any partial, incomplete or inaccurate statemt hrin of such contents or of the effect throf or of the terms of the tenancies] & of the state of the ppty as to repairs, insce, party-walls & all other matters.

Abstract.

6. *Provons as to delivery of abstract*, p. 395, *with appropriate special condon as to commencemt and evidence of title*, pp. 322 *et seq., and as to identity, expenses, &c., as at* p. 253.

(*a*) Where the sale is of part only of the property comprised in the lease to the vendor say "as the same are held with other ppty &c. at the entire yrly rent of £—— whrof the yrly sum of £—— shl be the apportioned rent payable by the pchaser in respt of the ppty hby pchased, & the residue of the sd entire rent of £——, namely the yrly sum of £—— shl be the apportioned rent payable by the vendor in respt of the residue of the demised premes & subjt &c." See also the provision as to indemnity against rent, &c., to be inserted in this case, *post*, p. 399, note (*e*).

(*b*) See *ante*, p. 391, note (*c*).

(*c*) See *ante*, p. 393, note (*c*).

(*d*) See *ante*, p. 249, note (*a*).

7. *Evidence of performance of covenants,* p. 266.
[*Licence to assign,* p. 324.]
8. *Provision as to conveyance,* p. 254.
9. *Provision as to covenants,* p. 255.
10. *Indemnity to vendor against rent, &c.,* p. 267 (*e*).
[*Provision as to muniments,* p. 370.]
11. *Provision as to time for delivery of requisitions,* p. 257.
12. *Rescission,* pp. 258 *et seq.*
13. *Misdescription not to annul sale,* p. 259.
14. *Avoidance on default of vendor.*
[*As to costs,* p. 396, *note.*]

In witness, &c.

The Schedule above referred to.

(*e*) In the case mentioned in note (*a*), p. 398, substitute the following clause: " No legal apportionmt shl be required of the sd entire yrly rent of £——; but the same shl, in the convce to the pchaser, be expressed to be apportioned as btn the vendor & the pchaser & their respt succors in title in the above mentioned amounts. The convce to the pchaser shl be made subjt to the sd apportioned rent of £—— & shl contain the proper express or implied statutory covts on the pt of the pchaser & the vendor resply [and provons] for the paymt, performce & observce & for indemnity agst non-paymt, non-performce or non-observce of the sd apportioned rents & the covts & condons of the sd lease to be pd, performed & observed in respt of the ppty hby pchased & the residue of the demised premes resply [& for constituting the apportioned rents to wch such covts resply relate & all moy wch may become payable thrunder resply a charge upon the land of the covtor]; & the provons of s. 190 of the L. P. Act, 1925, shl apply thrto." See the L. P. Act, 1925, s. 77, sub-ss. (6) and (7), and s. 190, sub-s. (6).

III.

AGREEMENT *for* SALE *of* FREEHOLDS *for a sum in gross and a* PERPETUAL RENT-CHARGE, *the* PURCHASER *being* INDEMNIFIED *against a pre-existing smaller* RENT-CHARGE (*a*).

Parties. *PARTIES*, A. (hrinar called the vendor), 1. B. (hrinar called the pchaser), 2.

Agreement for sale. **1.** THE vendor agrees to sell & the pchaser agrees to pchase All, &c., *Parcels, see Conveyances on Sale, Parcels*, pp. 505, with the appurts throf for an este in fee simple absolute in posson free from incumbces except an overriding rent-charge of £—— charged on the sd premes togr with other ppty by an indre dated, &c., & the covts contd in such indre, so far as they affect the premes, but exonerated from & with such indemnity against the sd rent-charge & against the sd covts so far as they affect other ppty not included in the psnt sale, as is hrinar mentd.

Consideration (*b*). **2.** THE conson for the sd pchase shl be the sum of £——,

(*a*) See the form of conditions of sale of building land on chief rent, p. 375. An index to precedents relating to rent-charges will be found in 28 Sol. J. 455. A transfer of registered land in consideration of a rent-charge may be made in any form legally sufficient for the purpose, of which the Registrar shall approve: L. T. R. 130.

A municipal corporation may, with the approval of the Minister of Health, sell corporate lands in consideration of a rent-charge: *Scarborough Corpn.* v. *Cooper*, [1910] 1 Ch. 68.

Consideration an annuity for vendor's life secured by mortgage, &c.

(*b*) If instead of a rent-charge the consideration is to take the form of an annuity for the vendor's life secured by mortgage or otherwise, the following form may be used: "The conson for the sd sale shl be an anny, or yrly sum of £——, payable to the vendor durg his life, commencg from the —— day of ——, & payable to him by eql qtrly paymts, clear of all deductions except income tax, the first paymt to be made on the —— day of —— next, in case the vendor shl be then livg, & the paymt of such anny shl be secd," *by mtge, &c., as in note* (*d*), p. 391, *or*, "by the pchase of an anny of a like amt from the Governmt or the —— Co for the life of the vendor, wch shl be accepted as sufficient, witht any lien or charge upon the sd hds & premes, or any other secy." It seems that this would not create a liability to succession duty on the vendor's death: see per Lord Westbury, C., *Floyer* v. *Bankes*, 3 De G. J. & S. at p. 312, better reported 33 L. J. Ch. 1; nor to estate duty, F. Act, 1894, s. 3 (1).

to be pd by the pchaser on the exon of this agrmt, & a perpetual yrly rent-charge of £——, to be secd to the vendor as hrinar mentd.

[**3.** *Provisions as to fixtures, &c., to be taken at a valuon,* p. 297.]

4. *Provision as to paymt of the amount of the valuon, if any, & complon,* p. 391.

5. *Posson, & intt on the amount of the valuon, if any,* p. 247, f. **4**, or 269, f. **4**.

6. *Production of indre creating overriding rent-charge. Purchaser to have notice of contents, &c.,* p. 249, f. **5**, *mutatis mutandis.*

7. *Provision as to delivery of abstract,* p. 395, *with appropriate special condons as to commencemt & evidence of title, &c.,* pp. 299 *et seq.*

8. *Last receipt for overridg rent evidence of pformce of covts,* p. 384, f. **14**.

9. *Provision as to convce,* p. 254 (*a*).

10. THE assurce of the premes shl reserve to the vendor, in fee simple (*b*), a perpetual yrly rent-charge of £—— to commence from the —— day of ——, & to be payable half-yrly on the —— day of —— & the —— day of ——, witht any deduction, the first such paymt to be made on the —— day of —— next, such rent-charge to be issuing out of & charged upon the premes, & to be secd by such powers & remedies for compelling paymt of the same as are given by s. 121 of the L. P. Act, 1925, in respt of rent-charges & other annl sums (*c*). The assurce shl contain the followg covts by the pchaser with the vendor (that is to say): 1st, to pay the sd rent-charge of £—— at the times & in mner afsd; 2ndly (*d*), to maintain & keep in repair the houses & bldgs on the sd land, & to rebuild the same from time to time when necy, & so that there shl always be upon the sd land houses or bldgs of the clear yrly value of not less than

Provisions for securing the rent-charge.

(*a*) As to the expenses of the preparation of the deed of conveyance in this case, see 9 Byth. Conv., 3rd ed., 518.

(*b*) No alteration in this form is required if the land is registered, Rule 107.

(*c*) Cf. f. 8, *ante,* p. 376, and see the notes thereto. If the assurance is to contain a covenant to erect buildings within a limited period, an absolute power of re-entry on breach of the covenant should also be provided for as in the form above referred to.

(*d*) A covenant to erect buildings will be added if required, see *ante,* p. 362.

£----; & 3rdly, to observe & pform all the covts & condons by the grantee contd in the sd indre of, &c. other than the covt for the paymt of the sd rent-charge of £20, so far as the same covts & condons apply to the ppty sold, & to indemnify the vendor thfrom. The sd assurce shl also reserve to the owner for the time being of the sd reserved rent of £—— power, &c., *continue* f. **9**, p. 378. The ppty shl be expressed to be conveyed exonerated from the sd rent-charge of £20 (*a*); & the assurance shl empower the pchaser to retain out of the sd rent-charge of £—— any moys wch he or they may be called upon to pay & shl actually pay in respt of the sd rent-charge of £20, includg any expses incurred in conseqce of the non-paymt throf (*b*). *Other clauses as in ordinary contracts for sale, see Precedent* I.

In witness, &c.

IV.

AGREEMENT *for* Sale *of* Freeholds *by* Tenant for Life. Variation *where* Principal Mansion House, Park, *&c., are included in the Sale.*

Parties. MEM OF AGRMT made the —— day of —— betn A., of, &c. (hrinar called the vendor), of the one pt, & B., of, &c. (hrinar called the pchaser), of the other pt.

Agreement. **1.** The vendor, who is the este owner under a vestg deed dated ——, agrees to sell [subjt to the consent of the trees of the settlemt referred to in the sd vestg deed or the approval of the Court being obtained as hrinar mentd (*c*)], & the pchaser agrees to pchase, for the sum of £——, the fee simple in posson

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(*a*) This will have the effect of implying the covenants referred to in L. P. Act, 1925, s. 77 (2) (ii). If the vendors are trustees the liability to enter into these covenants should be negatived, and the purchaser should be bound to be content with such other indemnity as the case may admit of.

(*b*) The rule against perpetuities will not apply to the power thus provided for: L. P. Act, 1925, s. 162 (c).

(*c*) The words in square brackets will only be required where the principal mansion house is being sold and where the consent of the trustees has not already been obtained. As to what is a principal mansion house, see S. L. Act, 1925, s. 65 (2). If the settlement was made after 1925 and does not expressly provide that the principal mansion house is not to be sold without trustees' consent or order of Court there is no need for the words in square brackets: see s. 65 (1) (b).

of the [ppal mansion-house & the lands enjoyed therewith & other] ppty specified in the [first] Schdle hto, with the appurts throf free from incumbces.

[**2.** *Provision as to timber, fixtures, &c., if any, to be taken at a valuon*, p. 297.] Timber, &c.

3. The pchase shl be completed on or bfe the —— day of —— next at the office of Messrs. —— at ——, the vendor's solors (*a*), on or bfe wch day [the sum of £——, being pt of the sd pchase-moy already pd as a deposit to Mr. ——, as stakeholder (*b*), *or* " into the —— Bank in the joint names of, &c., as stakeholders, but at the risk of the pchaser," shl be pd by the sd ——, & the residue of] the sd pchase [& valuon] moy shl be pd by the pchaser to the trees of the settlemt referred to in the sd vestg deed, or, at the option of the vendor, to be signified in writg to the pchaser within one week after the title is accepted, into Court. Payment of purchase-money and completion.

4. If at any time bfe complon it shl appear that the vendor is unable to assure the sd ppty to the pchaser for an este in fee simple [subjt as afsd] unless & until trees for the pposes of the S. L. Act, 1925, of the settlemt referred to in the sd vestg deed are appointed, the vendor will at his own expse or that of the settled este either himself appt or apply to the Court to appt pper psons to be such trees. Appointment of trustees for purposes of S. L. Acts.

5. *Provisions as to posson & intt, insurances, production & notice of documts, &c., as in Prec. I.*, pp. 391, 393 *et seq.*

[*Reservations and restrictive conditions in favour of vendor* (*c*). *See Prec. I.*, p. 395.]

6. *Provisions as to abstract, with appropriate special condons, as to commencement & evidence of title, or provon as to acceptce of title, Prec. I.*, p. 395.

7. Upon paymt of the pchase [& valuon] moy to the sd trees, or into Court as afsd, *continue as in* f. **13**, *at* p. 254. Conveyance.

8. The vendor shl not be required to enter into any covt for title except the usual implied statutory covt that he has not incumbered.

(*a*) It will be convenient that the office fixed for completion should be that in which the title deeds are kept, usually that of the solicitors to the tenant for life.

(*b*) The purchaser should take a receipt for the deposit: see *ante*, p. 392, note.

(*c*) As to limited owners selling subject to restrictions see *ante*, p. 357, *note*.

9. *Provisions as to muniments, requisitions, rescission & misdescription, costs, &c., as in Prec. I.*, pp. 395, 396.

Clause avoiding contract unless consent of trustees or Court obtained.

10. THE vendor shl on or bfe the —— day of ——, at his own cost or that of the settled este, apply for & endeavour to obtain the consent of the sd trees to or an order of the Court approvg the sale, & in case such consent or order shl not be obtained on or bfe the —— day of ——, or such later day as the vendor & the pchaser shl agree to then the sale shl be void, & the deposit shl be [released and] returned to the pchaser, but witht any intt, costs, or compenson.]

IN WITNESS, &c.

The Schedules.

V.

CONTRACT *for* SALE *of* FREEHOLDS *to a* RAILWAY COMPANY (*d*). VARIATIONS *for* LEASEHOLDS *and where the* SALE *is made under the* SETTLED LAND ACT, 1925 (*e*).

Parties

PARTIES, A. (hrinar called the vendor), 1. [B. & C., *vendor's trees*, 2.] D., as agent for & on behalf of the —— Rly Co. (hrinar called the Co), 3.

(*d*) See the Lands C. C. Act, 1845, the Lands C. C. Act Amendment Act, 1860, the Lands C. C. Act, 1869, and the Lands Clauses (Umpire) Act, 1883. Proceedings for the acquisition of land by corporations under their compulsory powers are commenced by notice to treat. This fixes the land to be taken, leaving only the price to be ascertained: *Tiverton, &c., Rly. Co.* v. *Loosemore*, 9 App. Cas. at p. 515; subject, however, to the right of the landowner under s. 92 of the Act of 1845, if the notice to treat includes a part only of a house or other building (see *Regent's Canal Co.* v. *L. C. C.*, [1912] 1 Ch. 583; *Genders* v. *L. C. C.*, [1915] 1 Ch. 1; *Beyfus* v. *Mayor of Westminster*, 59 Sol. J. 129) or manufactory, to give a counter notice requiring the corporation to take the whole; and to the right of the corporation on receiving such counter-notice to withdraw their original notice, the effect of the withdrawal being to remit the parties to their original positions: *Wild* v. *Woolwich B. C.*, [1910] 1 Ch. 35. See *Pollard* v. *Middlesex C. C.*, 95 L. T. 870; and, if they so desire, to give a fresh notice: *Ashton Vale Iron Co.* v. *Bristol Corpn.*, [1901] 1 Ch. 591.

As to sales by limited owners and infants.

(*e*) See also the clauses contained in Prec. VI., *post*, p. 411. Where the vendor is a tenant for life, the sale, if the title is otherwise good, may generally be made, to the advantage of both the vendor and the company, under the S. L. Act, 1925, so as to avoid the necessity for a valuation, and payment of the purchase-money into Court under the Lands C. C. Act, 1845, ss. 9 and 69; see the clause providing against the purchase-money being paid into Court.

Agreement for sale.

1. By virtue of the powers, & subjt to the provons of the —— Rly Act, 18——, [& the —— Rly Act, 18——, or one of them], & of the Public Acts incorporated thwith, the vendor agrees to sell & the Co. agree to pchase for the pposes of the rly & works authorised by the sd first-mentd Act, for the sum of £——(*a*), ALL THAT piece or pcel of land situate in the parish of ——, in the county of ——, contg —— acres, &c. [with the messe & outbldgs erected & built thron, or on some pt throf], known as, &c., & numbered —— in the plans & books of reference thto of the rly authorised by the sd first-mentd Act relatg to the sd Parish deposited with the Clerk of the Peace for the sd county of —— [*if so intd say* " togr with all the mines & minerals (if any) in or under the same," *or for freehlds*, " togr with all minerals, beds of, &c., &c., substances & soil on or within —— ft. of the surface of the sd lands, but exclusive of all mines or minls lying at a lower depth than —— ft under the surface throf " (*b*), *continuing for free-*

After notice to treat and until the price is ascertained, or possession taken (see *ante*, p. 339, note (*c*)), the parties retain their original characters at law and in equity: *Tiverton, &c., Rly. Co.* v. *Loosemore, sup.*, at p. 493, but each has the right to compel the other to proceed to have the price fixed: *Harding* v. *Metropolitan Rly.*, L. R. 7 Ch. at p. 158. The price may be fixed either by proceedings under the Acts or by agreement. In the former case an open contract is established which may be enforced specifically by either party: *Re Cary-Elwes*, [1906] 2 Ch. 143; and an equitable conversion of the property is immediately effected: *Haynes* v. *Haynes*, 1 Dr. & Sm. 450. In the latter case the contract must be concluded in accordance with its terms. A landowner may withdraw and amend his claim until it is accepted: *Cardiff Corpn.* v. *Cook*, [1923] 2 Ch. 115.

(*a*) As to the validity of a stipulation for reduced traffic rates over the land taken as part of the consideration, see *Holwell Iron Co.* v. *M. Rly. Co.*, [1910] 1 K. B. 296.

Minerals.

(*b*) An agreement to sell land to a railway or waterworks company does not include minerals, unless they are expressly included; see the Railway C. C. Act, 1845, ss. 77—85. These sections are applicable where the purchase is by agreement after the compulsory powers of the company have expired, but do not extend to minerals beyond the prescribed limit, *Howley, &c., Co.* v. *L. & N. W. Rly. Co.*, [1911] 2 Ch. 97; [1913] A. C. 11.

As to what are minerals within the above sections, see *Lord Provost of Glasgow* v. *Farie*, 13 App. Cas. 657; *M. Rly. Co.* v. *Robinson*, 15 App. Cas. 19; *Re Todd, &c., Co.* v. *N. E. Rly. Co.*, [1903] 1 K. B. 603; *G. W. Rly. Co.* v. *Carpalla, &c., Co.*, [1910] A. C. 83; *N. B. Rly. Co.* v. *Budhill, &c., Co.*, [1910] A. C. 116, where a number of the more important authorities on the subject are discussed: *Caledonian Rly. Co.* v. *Glenboig, &c., Co.*, [1911] A. C. 290; *Symington* v. *Caledonian Rly. Co.*, [1912] A. C. 87. *Cf.* Waterworks Clauses Acts, 1847, s. 18.

holds as in Prec. I., p. 391, *and for leaseholds as in Prec. II.*, p. 398, *and note* (*a*) *thereto* (*c*).

Purchase-money to include compensation for damage by severance, &c. (*d*).

2. The sd pchase-moy shl be considered to include satisfon & compenson for all damage (whether permanent, temporary, or recurrg), loss, or inconvenience occasd by severce or orwise, injuriously affectg the vendor's other ppty, in the exercise of the powers of the sd Acts, or by removal, or loss of trade or goodwill [except structural damage & injury to any adjoing lands or bldgs caused by the constron of the sd rly, or orwise done or permitted by the Co.], & shl be in full satisfon for all communicons, gates, bridges, fences, culverts, drains, waterg-places, ways, passages, works, & things over, under, across, or near to the sd rly [except such as are hby specially provd for] wch might orwise be required to be made or done under any of the sd Acts for the better enjoymt, protection, or accommodon of the vendor's other ppty.

Levels.

[**3.** The vendor hby consents to such alterons of levels & works as may be found convenient in the constron & maintence of the sd rly & works.]

Tenants' interest (*e*).

[**4.** The sd pchase-moy shl also include all claims (except for crops as hrinar provd for) on the pt of the tenants or occupiers of the premes (whether under contract, custom, or statute (*f*) or orwise), & if the Co. shl require posson bfe the crops are matured, they shl pay the value of such crops to

As to incumbrances.

As to provision for cross covenants of indemnity, &c., on sale of part of premises comprised in lease.

Compensation.

(*c*) As the vendor must show a title in accordance with the contract, easements, restrictive covenants and other rights in the nature of incumbrances subject to which the property is sold should be specified. These rights are matters for compensation under the Acts: *Long Eaton Recreation Ground* v. *M. Rly. Co.*, [1902] 2 K. B. 574; and the usual clause as to production and notice of documents is accordingly omitted. See the provision as to tenant's interests in clause 4, *infra*.

Where, on the sale of part only of the property comprised in a lease, the company have also given notice to treat for the purchase of the reversion, the usual provisions for incorporating in the conveyance the statutory implied covenants of indemnity may be omitted.

(*d*) See Lands C. C. Act, 1845, s. 63, and the R. C. C. Act, 1845, ss. 6, 16. As to compensation for interests in the nature of incumbrances incident to other lands than those taken and as to the rule relating to the creation of new interests after notice to treat, see *ante*, p. 196, note (*b*), and p. 199, note (*b*).

(*e*) As to the remedy of the landlord for arrears of rent where land is taken compulsorily, see *Re Kilworth Rifle Range*, [1899] 2 Ir. R. 305; *Re London Street, &c., Act*, 57 L. T. 673.

(*f*) See *post*, "Lessor's Covenants."

the tenants or occupiers of the land, posson whrof is required, or orwise allow time for the same to mature & be removed. The Co. shl give due notice to the tenants & occupiers of the sd lands & premes to treat as provd by statute, & shl deliver all claims made by any such tenants & occupiers in respt of their intt in the sd land & premes to the vendor, who shl settle the same upon such terms in all respts as he may think fit, he, the vendor, hby agreeing to indemnify the Co. from paymt throf.]

Purchase money to be paid to trustees (*a*).

[**5.** The vendor, psuant to & in exercise of the power in that behalf given to him by the S. L. Act, 1925, hby elects that the sd pchase-moy of £—— shl be pd by the Co to the pties hto of the second pt as trees of his settlemt, & not into Court.]

Accommodation works (*b*).

[**6.** The Co shl, within —— yrs from the date of this agrmt, execute & for ever thrafter maintain, at their own expse, the accommodon works specified in the schdle hto for the benefit of the vendor and his successors in title to the —— farm. The convce to the Co shl contain a covt to the effect of this psnt clause, & a duplicate throf executed by the Co shl be delivered to the vendor on complon.]

Abstract.

[**7.** The vendor shl, within —— days from the date hrof, deliver to the solors of the Co an abstract of title to the premes hby agrd to be sold, but to such extent only as the sd solors shl require, & produce the deeds & munimts of title & other evidences in proof of the same, & the vendor & all other necy pties shl make & execute all pper & necy assurces to the Co, or as they may direct, of the premes with the usual staty covts for title & for production [& safe custody] of deeds & munimts not handed over to them.]

Possession (*c*).

8. The Co shl be at liberty (subjt to the rights of the tenants) to take posson of the premes at any time bfe complon of the pchase on giving to the vendor or his solors —— days' notice

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(*a*) See the S. L. Act, 1925, s. 75.

(*b*) See *G. W. Rly. Co.* v. *Talbot*, [1902] 2 Ch. 759; *Taff Vale Rly. Co.* v. *Gordon Canning*, [1909] 2 Ch. 48.

(*c*) This clause enables the company to commence their works: *Bolton* v. *London School Board*, 7 Ch. D. 766. As to the right of the company to take possession, see Lands C. C. Act, 1845, ss. 84, 85; *Bygrave* v. *Metropolitan Board of Works*, 32 Ch. D. 147. The company, by entering into possession, does not lose the right of proceeding by notice to treat in respect of an incumbrance upon the property: *Cooke* v. *L. C. C.*, [1911] 1 Ch. 604.

in writg under the hand of the secretary or solor of the Co, & (if required) depositg the sd pchase & compenson-moy in the joint names of the Co or their nominee & the vendor in the —— Bank, where the same shl remain at the risk of the Co until the pchase shl be completed, when the same shl be pd to the vendor or other pties entitled thto or orwise into Court for their benefit, as provd by the sd Acts, the Co being entitled to any intt allowed by the sd bank, & such entry shl not be an acceptce of the title *or*, "The Co shl not proceed to take posson of any pt of the sd lands & premes witht either the written consent of the vendor or takg such proceedings for obtaing posson as provd by the sd Acts, & in case posson of the premes shl be taken by the Co bfe the vendor shl have deduced a good title to the whole of the premes, the pchase-moy, or a proportionate pt throf in respt of the premes to which a good title shl not have been deduced, shl, pendg the investigon of the title, be deposited at the risk of the Co in a bank to be approvd by the vendor, in the joint names of the vendor & a nominee of the Co, & shl be pd to the vendor or other pties entitled thto with intt thron at the rate of £—— p.c. p.a. from the time of the deposit, upon a good title being deduced as afsd, or in default of such title being deduced shl be pd into Court psuant to the provons of the sd Acts, with intt as afsd."

Alternative clause.

Completion (*a*).

9. The pchase shl be completed on or bfe the —— day of —— next, at the office of Messrs. ——, at ——. [IIA. The vendor shl not be required to give any express covts for title or to convey so that any covts for title are implied within the meaning of s. 76 of the L. P. Act, 1925 (*b*).]

Interest on unpaid purchase-money.

10. The Co shl pay to the vendor or other pties entitled thto intt at the rate of £— p.c. p.a. on the sd pchase — & compenson-moy, or on so much throf as shl remain unpd [*where the varion in clause* **8** *is used, say*, "or undeposited"] from the time of their takg posson or from the sd —— day of —— next, whichever shl first happen, until the complon of the pchase & paymt of the sd pchase- & compenson-moy, or

(*a*) The purchasers are bound to take a conveyance: *Re Cary-Elwes*, [1906] 2 Ch. 143.

(*b*) In the case of a compulsory sale it is doubtful whether the railway company can require the vendor to enter into covenants for title, see Frend & Ware, 127; Sugden, V. & P., 14th ed., 84; but when the sale is voluntary these covenants are usually entered into.

the balance throf; *or*, "The Co havg, with the consent of the vendor & witht prejudice to the rights & liabilities of the respective pties with respt to title as betn vendor & pchaser, taken posson of the portions of the sd land numbered resply —— on the sd plan, on the —— day of ——, & of the remr of the sd lands on the —— day of ——, shl pay intt at the rate of, &c., on the respective sums of £—— & £—— (being the apportioned pchase-moy for such respective portions of the sd lands) from the respective dates when posson throf resply was taken as afsd until the actual complon of the pchase." Variation.

[11. The land-tax & tithe rent-charge shl be apportioned, if necessary, under the provons of the sd Acts at the expse of the Co.**]** Apportionment of land-tax, &c.

Add any provisions as to title, identity, custody of deeds, &c., wch may be applicable, as in ordinary contracts for sale (*c*).

12. *Provision as to misdescription excluding compensation*, p. 259.

13. The vendor shl release to the Co any right of pre-emption to wch he may be entitled under the Lands C. C. Act, 1845, in respt of the premes *or*, "As to any pt of the premes wch shl not be required for the pposes of the sd Co, the vendor, his hrs or assns, shl have the like right of pre-emption as he or they wd have been entitled to under the Lands C. C. Act, 1845, if such lands had not been built upon or used for bldg pposes, & no pt of such superfluous lands shl in the meantime be let by the Co on Release, *or*, reservation, of right of pre-emption (*d*).

(*c*) In agreements for sales to companies purchasing under the Lands Clauses Acts, it is rarely necessary to make any stringent conditions as to the evidence to be given in support of the title, for as all the expenses are thrown on the company, it rarely happens that they make unreasonable requisitions. The main point to be attended to on the part of the vendor is to guard by contract against the money being paid into Court in such a manner as to excite any dormant claims. Conditions as to title on sales under Lands Clauses Acts.

(*d*) The first of these alternative clauses only binds the vendor himself and applies to rural lands, the second to lands in a town: see Lands C. C. Act, 1845, s. 128.

A company having compulsory powers of purchasing land for the general purposes of their undertaking cannot by agreement bind themselves not to use the land purchased in a particular manner, if the result of so doing would be to divest themselves of any of their statutory powers in relation to the land: *Ayr Harbour Trustees* v. *Oswald*, 8 App. Cas. 623; and see *Stourcliffe Estates Co.* v. *Bournemouth Corpn.*, [1910] 2 Ch. 12. Cf. *G. C. Rly. Co.* v. *Balby, &c. U. D. C.*, [1912] 2 Ch. 110. Reservations, &c.

lease or from yr to yr or orwise to any pson other than the vendor or his successors in title."

Costs (*e*). **14.** The Co shl, on complon of the pchase, pay the vendor's costs of & incidental to this agrmt & of deducg & verifyg his title, & of the assurce to the Co & all other costs & expses of the vendor as provd by the Lands C. C. Act, 1845, "includg all costs, charges & expses wch might have been ordered by the Chancery Division to be pd by the Co if the pchase-moy had been deposited in the bank" (*a*) [togr with the sum of £—— for the costs & charges of his surveyor & solor for attendg the makg out & prosecution of his claims against the Co, inclusive of the costs of this agrmt]; *add, in case of tenant for life, &* including the costs of any vesting deed or apptmt of trustees whether by deed or by the Court that may be necy (*e*).

Provision for failure of agreement. **15.** In case this agrmt shl in any respt fail to take effect, whether owing to the default of either pty or orwise, or in case any matter relatg to the pchase or takg by the Co of the premes is not hrin provd for, the respective pties hto may, so far as respts the sd lands & premes hrinbfe described, at any time exercise or have recourse to such of the powers & provons of the sd Acts relatg to the pchase or takg of land by the Co, whether

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Costs.

(*e*) The Company are bound by the Lands C. C. Act, 1845, s. 82, to pay the costs of deducing and proving the vendor's title (see the cases collected, 50 Sol. J. 250), and of constituting a proper person to assure the property, including steward's fees and costs of admittance of co-heirs to copyholds: *Re London United Tramways Co. Act*, 1900, [1906] 1 Ch. 534; but probably not the lord's fine on admission: *Re Thames Tunnel, &c., Act*, 1900, [1908] 1 Ch. 493. The Company are not bound to pay the costs of obtaining probate to the vendor's will: *Re Elementary Education Acts*, [1909] 1 Ch. 55.

Section 42 of the L. P. Act, 1925, which makes certain costs payable by the vendor notwithstanding any stipulation to the contrary does not, it is submitted, override the express enactment of the Lands C. C. Act as to costs.

The section applies where the agreement is either silent as to costs or contains no provision so inconsistent as to amount to an exclusion of the section. Provided that the company have compulsory powers over the land purchased, it appears to be immaterial, so far as regards the application of the section, whether the vendor sells as absolute owner or under the S. L. Acts: *Re Burdekin*, [1895] 2 Ch. 136.

As to the costs of obtaining payment out of Court of the purchase-money, see *Re Griggs*, [1914] 2 Ch. 547.

(*a*) See *Re Lady Bentinck* v. *L. & N. W. Rly. Co.*, 40 Sol. J. 130; and as to the costs of investment in railway stock, see *Re Gaselee*, [1901] 1 Ch. 923.

by agrmt or by compulsory means, as may be applicable to the case.

In witness, &c. (*b*).

[The Schedule above referred to.]

VI.

AGREEMENT *between a* Railway Company *and a* Landowner *for withdrawal of the* Opposition *of the latter to a* Bill *for the* Extension *of the* Railway *through his* Settled Estates (*c*).

Parties, [A. as agent for & on behalf of] the —— Rly Co (hrinar called the Co), 1. B., *landowner*, 2. C. & D., trees of the settled estes of the sd B. in the county of —— (hrinar called the trees), 3. Parties.

Whas a bill is now pendg in parliamt by wch it is proposed to empower the Co to make addonal rlys includg a rly in the county of —— to be called the —— Rly, wch will pass through a portion of the sd settled estes of the sd B. situate in the parishes of, &c., in the same county: [& it will be necy that such rly shd pass through a portion of such lands situate in the parish of ——, ptly by means of a deep cuttg, & ptly by a tunnel]: And whas the sd B. has presented a petition to the Recital as to pending bill for extension of railway, and opposition by B.

(*b*) *Ad valorem* duty will be payable on the conveyance made in pursuance of this agreement: Fin. Act, 1895, s. 12. As to the construction of this enactment, see *Eastbourne Corpn.* v. *Att.-Gen.*, [1904] A. C. 155.

(*c*) See also the next Precedent, and the form of agreement in 2 Dav. Prec., 4th ed., pt. 1, p. 44. Many examples of clauses required for agreements of this kind will be found in some of the important Railway and Canal, &c., Acts, such as the Manchester Ship Canal Act, 1885 (48 & 49 Vict. c. clxxxviii.), the Manchester Corporation Water Act, 1879 (42 & 43 Vict. c. xxxvi.); the Buxton Urban District Council Act, 1904 (4 Edw. 7, c. ccxxiv.); the North East London Railway Act, 1905 (5 Edw. 7, c. ccviii.), and the Malvern Water Act, 1905 (5 Edw. 7, c. clxxxiv.). Any moneys received by a tenant for life for withdrawal of his opposition are within s. 73 of the Lands C. C. Act, 1845: *Pole* v. *Pole*, 2 Dr. & Sm. 420; but this enactment does not interfere with the power of the tenant for life to contract with the company: *Taylor* v. *Chichester, &c. Rly. Co.*, L. R. 4 H. L. 628. The tenant for life must pay the costs of his opposition above those for which the company are liable: *Re Earl of Berkeley*, L. R. 10 Ch. 56, unless the opposition is sanctioned by the Court under the S. L. Act, 1925, s. 92. Powers of tenant for life as to opposing bills.

House of Commons prayg to be heard against the sd bill as far as the same affects his ppty & intts: NOW THESE PSNTS WITNESS & it is hby agrd that if the sd Bill as modified in accordce with this agrmt shl become an Act (hrinar called the intd Act) during the psnt session of Parliamt.

Price to be paid for lands taken and for right to make tunnel (*a*).

1. THE Co shl pay to the sd B. or his trees for the pchase of all lands formg pt of the estes of the sd B. situate in the parishes of, &c., wch shl be taken by them under the powers of the intd Act for the ppose of the sd rly & works (hrinar referred to as the lands taken), at the rate of £—— per acre, & so in proportion for any less quantity than an acre, exclusive of timber trees & underwood (*b*), mines & minerals; such sum to be exclusive of compenson (*c*) for severce & for any injury or inconvenience to the lands adjoing the lands taken, [or to the lands over or adjoing the sd tunnel], or to the sd B. or his trees as owners of such lands arisg from the construction of the sd rly or the works of the Co, & exclusive also of the compenson payable to the lessees, tenants, or occupiers of the lands taken [or of the lands over or adjoing the sd tunnel] for the pchase of their intts or orwise (*d*).

(*a*) As to this provision see *Taylor* v. *Chichester, &c., Rly. Co.*, L. R. 4 H. L. 628.

New easement.

(*b*) The acquisition of a new easement is not authorised by the Lands C. C. Act, 1845: *Pinchin* v. *London, &c. Rly. Co.*, 5 De G. M. & G. 851; *G. W. Rly. Co.* v. *Swindon, &c., Rly. Co.*, 9 App. Cas. 787; even on a purchase by agreement with an owner in fee: *Re Barrow-in-Furness Corpn. & Rawlinson*, [1903] 1 Ch. 339; *Re London School Board & Foster*, 47 Sol. J. 204. If such acquisition is authorised by the Bill, insert, if so intended: "And shall pay to him or them for the right or easemt of makg, usg & maintaing the tunnel wch will be necy under a portion of the sd estes in the parish of —— as afsd, the sum of £——, such respective," &c.

Compensation.

(*c*) The right for compensation for damage done in exercise of statutory powers, is a legal chose in action: *Dawson* v. *G. N. & City Rly. Co.*, [1905] 1 K. B. 260. Cf. *Defries* v. *Milne*, [1913] 1 Ch. 98. See further as to compensation, *ante*, pp. 191, 193, notes.

Provision as to limited owners.

(*d*) If the landowner is unable to contract except under the provisions of the Lands C. C. Act, 1845 (which however would not now usually be the case having regard to the powers of the S. L. Act, 1925), add this clause:—

"The Co shl pay the full amt of compenson for each of the pposes afsd, determined by a valuon psuant to the Lands C. C. Act, 1845, if such amt shl exceed the respective amt hby agrd to be pd."

2. THE Co shl pay to the sd B. or his trees for all timber trees, & underwood on the lands taken, at a valuon to be made, in default of agrmt, by two valuers or an umpire in the usual way. Timber (*e*).

3. THE Co shl not under the provons of the intd act witht the consent of the sd B. or his trees, take, use, occupy or enter upon any land or ppty of the sd B. or his trees, outside the limits of deviation shown on the deposited plans except so far as may be necy for or in relation to the alteron, construction, or exon of any roads, bridges, drains, or other accommodon works in connection with the rly or the works hby provd to be done by the Co. Restriction on right of company to take lands outside limits of deviation (*f*).

4. THE sd B. or his trees shl have the like right of pre-emption over any of the lands taken that shl be superfluous as he or they wd have been entitled to under the Lands C. C. Act, 1845, if such lands had not been built upon or used for bldg pposes (*h*), & no pt of such superfluous lands (*i*) shl, in the meantime, be let by the Co on lease or from yr to yr or orwise to any pson other than the sd B. or his trees, except only to servants of the Co from yr to yr to be used as garden ground, & for no other ppose (*k*). Reservation to vendor of right of pre-emption (*g*).

(*e*) Estate duty may become payable on the timber: Fin. (1909–10) Act, 1910, s. 61 (5), as amended by Fin. Act, 1912, s. 9. See *ante*, p. 311, note (*g*).

(*f*) See *Doe* v. *North Staffordshire Rly. Co.*, 16 Q. B. 526.

(*g*) See Lands C. C. Act, 1845, s. 128; and as to lands taken by agreement, see *City of Glasgow, &c., Co.* v. *Caledonian Rly. Co.*, L. R. 2 H. L. Sc. 160.

(*h*) See *L. & S. W. Rly. Co.* v. *Blackmore*, L. R. 4 H. L. 610, and *post*, p. 716.

(*i*) Superfluous land under the Lands C. C. Act, 1845, s. 127, is "land acquired by the promoters of the undertaking, but not required: *Hooper* v. *Bourne*, 5 App. Cas. 1; for the purposes of the undertaking": *G. W. Rly. Co.* v. *May*, L. R. 7 H. L. at p. 292, and cases cited, *post*, p. 640. Some of the railway companies in London (*e.g.* the Metropolitan District Railway Co.) have power by their private Acts to retain superfluous lands on the execution of a deed poll. Superfluous land.

(*k*) "THE Co, upon makg such paymt for the same as afsd, shl have & be entled to the right, easemt, or liberty of makg, usg, & maintaing such tunnel as they may deem necy for carryg their proposed new line through a portion of the sd estes situate in the parish of —— afsd, & also of erectg & maintaing telegraph posts & wires over the surface of the sd lands above the tunnel in the line of such rly, the Co payg from time to time to the sd B. or his trees, or his or their tenants, compenson for any damage or injury occasioned by the exercise or user of such respive rights, easemts or liberties. Liberty to make tunnel.

Occupation rent for lands temporarily taken.

5. The Co shl pay to the sd B. or his trees, in respt of all land formg pt of the sd estes wch shl be taken or occupied by the Co for the deposit of earth or spoil durg the construction of the sd rly or the exon of the works, or for other temporary pposes, a rent of £—— per acre p.a., & so in proportion for any less quantity than an acre or any less time than a yr, durg their occupon or user of the same (such rent to be exclusive of any compenson payable to the tenants or occupiers of such lands), & shl pperly fence the land so taken: And in case the Co shl take any lands of the sd B. for the deposit of earth or spoil, they shl remove & store the surface soil to a depth of not less than —— inches, & shl on complon of the works, or sooner in case such respective lands shl no longer be required by the Co for the ppose of the works, restore & deliver up such spoil banks & other lands taken for temporary pposes, & replace the surface soil & leave the spoil banks in uniform heaps pperly trimmed to slopes of not less than four to one, & covered with soil & fit for cultivon, & sown with seeds or planted, as the sd B. or his trees, or his or their agent, shl direct; And the Co shl also upon giving up the occupon thof pay a sum of £—— per acre, & a proportionate amt for any quantity less than an acre, for all land left covered with spoil, & shl also upon givg up the occupon of the land belongg to the sd B. or his trees, wch may have been taken by the Co for temporary pposes, pperly level such land, & remove, or at the option of the sd B. or his trees leave, the fences thto, & pay to him or them compenson for any injury done by the works of the Co to such land, the amt of such compenson, unless settled by agrmt, to be ascertained by the valuon or determinon of two referees or an umpire in the usual way.

Surface to be restored.

Accommodation works.

6. The Co shl execute & provide the accommodon & other works specified in the first schdle hto for the protection & benefit of the sd B. & his trees, & his or their tenants, in addon to any other works wch the Co may be or become liable to execute under the genl Acts relatg to rlys for the protection, accommodon, or benefit of the sd B. & his trees, or his or their tenants.

Drainage.

7. The Co shl not in any respt damage or obstruct the existg drainage of the lands of the sd B., but shl construct pper drains, culverts, & other works for the efficient drainage

of the sd lands (so far as the drainage may be affected by the Co's works) at such depths & in such mner as the agent for the time being of the sd B. or his trees shl direct, & also all such works as may be required for maintaing & makg perfect any under-drainage wch may be intersected or orwise interfered with by the Co's works.

Execution and maintenance of accommodation works.

8. All accommodon & other works hrinbfe agrd to be done by the Co within the boundary of the lands taken shl at all times hrafter be maintained by the Co at their own expse in all respts, & to the reasble satisfon of the sd B. or his trees.

Compensation to tenants.

9. The Co shl pay all compenson [includg compenson under the Agricultural Holdings Act, 1923 (*a*)] pperly payable to the lessees, tenants, or occupiers of the lands formg pt of the estes of the sd B. taken by the Co, whether permanently or for temporary pposes, [or over or adjoing the sd tunnel], a pper apportionmt or abatemt, to be fixed by the agent for the time being of the sd B. or his trees, being made in respt of the rent payable by the tenant of lands of wch a pt only is taken by the Co.

Costs (*b*).

10. The Co shl pay to the sd B. & his trees, all costs, charges, & expses incurred or to be incurred by him or them in respt of the sd applicon to Parliamt & his opposon to & petition against the sd bill, or in respt of this agrmt, & any deeds, instrumts, or acts wch may be necy or pper for carryg out the same, or in respt of the works & matters hrinbfe agrd to be executed & pformed by the Co, in addon to all other costs, charges, & expses wch may be payable by the Co under the Lands C. C. Acts, 1845 to 1869, or any other Act affectg the Co.

Clauses to be inserted in Bill giving effect to agreement (*c*).

11. The Co shl use their best endeavours to procure the insertion & enactmt in the pendg bill of any clauses or alterons wch the sd B. or his trees may reasbly require for the ppose of givg effect to this agrmt *or* "the clauses contd in

(*a*) See Agricultural Holdings Act, 1923, ss. 1, 9, and 12. As between the landowner and his tenants questions submitted to arbitration are regulated by s. 16 and the second schedule of that Act.

(*b*) See *ante*, pp. 68, note (*a*), 410, note (*e*).

Standing orders as to Bill confirm-

(*c*) An agreement, which the bill refers to and seeks to confirm, must be scheduled to and printed with the bill (Commons S.O., session 1893), and must contain a clause declaring it to be subject to such alterations as Parliament may think fit to make in it (Lords S. O., session 1893). If the clauses to

the schdle hto either witht alteron or with such alterons only as shl be assented to by the sd B. or his trees."

Agreement conditional on Bill being passed.

12. Except the two last precedg clauses, the agrmts on the pt of the Co hrinbfe contd are contingent on the sd pendg bill being passed into a law in its psnt or some modified form in the psnt session of Parliamt, so far as regards the clauses authorisg the formation of the sd rly through the estes of the sd B.

Opposition to be withdrawn(*a*).

13. On the faith of this agrmt being in all respts specifically pformed & observed on the pt of the Co, the petition of the sd B. against the sd bill shl be withdrawn, & the sd B. & his trees shl not, directly or indirectly, offer or sanction any opposon to the sd bill.

Interpretation.

14. The expression "the trees," as hrinbfe used, shl include the trees or tree for the time being of an indre dated, &c., *or* the will of X. deced.

In witness, &c.

[*Schedules.*]

VII.

AGREEMENT *between the* Promoters *of a* Railway Company *and a* Landowner *for withdrawing* Opposition *to the* Company's Bill.

Parties.

Parties, A. & B., some of the provonal committee (*b*) of the intd Rly Co hrinar mentd (hrinar called the Promoters), 1. The Co hrinar mentd as intd to be incorporated under

ing agreement.

be inserted in the bill require a reference to a plan, the plan should be referred to as "signed by —— the chairman of the Committee of the House of Commons to whom the bill for this Act was refd, & deposited in the private bill office of that House."

(*a*) A contract to pay a landowner money, in consideration of his not opposing a bill in Parliament, is *ultra vires* the Company: see *Earl of Shrewsbury* v. *North Staffordshire Rly. Co.*, L. R. 1 Eq. 593, and the cases cited in Browne & Theobald on Railways, 4th ed., 90; Hodges on Railways, 7th ed., pp. 141 *et seq.*

(*b*) As the provisional committee cannot bind the company when incorporated, Browne & Theobald, 4th ed., 91, it is important to have the personal guarantee of some responsible person: see *Kelner* v. *Baxter*, L. R. 2 C. P. 174; *Re Northumberland Avenue Hotel Co.*, 33 Ch. D. 16: *Natal Land, &c., Co., Ltd.* v. *Pauline Colliery, &c., Ltd.*, [1904] A. C. 120.

the name of the —— Rly Co (hrinar called the Co), 2. C., *landowner*, 3.

Whas the promoters & others are promotg a bill now pendg in parliamt, intituled, &c., whby it is proposed to incorporate the Co, & to authorise them to make & maintain a rly from —— to ——, the line of wch rly wd pass for a considerable distance through a farm & lands situate, &c., of wch the sd C. is tenant for life: And whas the sd C. has lodged in the House of Commons a petition against the sd bill: And whas, in order to the obviatg of all opposon by the sd C. to the sd bill & for the other pposes hrin appearg, the pties hto of the first & third pts have entd into the agrmts hrinar contd, with the intention that the Co shl become party to & execute these psnts forthwith after their incorporon: NOW THEREFORE THESE PSNTS WITNESS that for the consons hrin appearg it is hby mutually agrd by & betn the promoters, on behalf of themselves & all other the promoters of the pendg bill, & with the intent to bind the Co, on the one hand, & the sd C. for himself & his assns, & also for the trees & benefl owners from time to time of the farm & lands afsd (who is & are comprised in the expression "the sd C." as hrinar employed), on the other hand, & also by way of separate agrmt betn the Co on the one hand, & the sd C. on the other hand, as follows:—

Recital as to pending Bill for incorporation of Company and opposition by C. Introductory recitals. Agreement.

1. [*Special agreements, see last Precedent.*]

2. The promoters will use their utmost reasble endeavours to procure the insertion & enactmt in the pendg bill of the clauses wch are set forth in the schdle hto.

Certain clauses to be inserted in the Bill.

[**3.** *Provision as to costs to be paid by Company or promoters, see last Precedent.*]

4. If the pendg bill be passed into law in the psnt session, the promoters will within —— days thrafter procure the Co to execute under their common seal, either these psnts & the duplicate throf, as the party thto of the second pt, or some other deed or instrumt to be prepared by the Co adoptg this agrmt, & on the same being so executed by the Co, all the future liability of the promoters under this agrmt shl cease: [And in case the Co shl refuse or neglect to execute this

Agreement to be executed by Company when incorporated (*c*).

(*c*) It would, of course, be better to get a clause inserted in the bill making the agreement binding on the Company: see *ante*, p. 415, note (*c*).

agrmt or such other deed or instrumt as afsd within the time hrinbfe limited (& in this respt time shl be of the essence of the contract) the sd. A. & B. & their respective legal personal representatives, shl be jointly & severally liable to pay on demand the sum of £—— to the sd. C., as liquidated damages.]

Opposition to be withdrawn.

5. On the faith of this agrmt being on the pt of the promoters & the Co resply in all respts specifically pformed & observed, the sd C. will not in any mner, either by himself or his agents, further oppose or orwise impede the passage of the sd bill through parliamt.

In witness, &c.

[*Schedule.*]

VIII.

AGREEMENT *for* Sale *of* Goodwill *and* Trade-mark (*a*), *the* Purchase-Money *being payable by* Instalments.

Parties

Parties, A. & B. (hrinar called the vendors), 1. C. (hrinar called the pchaser), 2.

Agreement for sale.

1. The vendors agree to sell & the pchaser agrees to pchase for the sum of £—— the goodwill of the business known as "——," being one of the businesses carried on by the vendors

As to trade marks, &c.

(*a*) See *post*, *sub tit.* "Leases (Miscellaneous Forms)"; Palmer, 11th ed., pt. 1, pp. 345 *et seq.* As to trade marks, see the Trade Marks Acts, 1905 to 1919, and the Rules of 1920; Sebastian on the Law of Trade Marks (4th ed.), also Kerly and Underhay on Trade Marks (4th ed.) and supplement thereto, 1920.

By the Act of 1905, s. 22, as amended by the Act of 1919, Second Schedule (which reproduces, with certain additions, s. 70 of the Patents, Designs, and Trade Marks Act, 1883), a trade mark when registered can only be assigned in connection with the goodwill of the business concerned in the goods for which it has been registered, and is determinable with that goodwill: see *Re Magnolia*, [1897] 2 Ch. at p. 396. By s. 35 (i.) of the Act of 1905, as amended by s. 9 of the Act of 1919, the Court or registrar may on the application in the prescribed manner of any person aggrieved (*inter alia*) by any entry wrongly remaining on the register, to make such order for expunging or varying such order, as it may think fit. As to the law in this respect under the Act of 1883, see *Batt & Co.* v. *Dunnett*, [1899] A. C. 428. See further as to assignment, rules 70—76.

As to using without authority the name or a colourable imitation of the name of a person carrying on business in connection with goods protected by a trade mark, or using the name of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods, see the Merchandise Marks Act, 1887, ss. 2 and 3, sub-s. 3.

in co-ptnp at ——, togr with the right to carry on such business under the name or style of ——, & also the exclusive right to use the brand or trade-mark —— on, *certain articles*, reservg to the vendors the right to use the sd brand or trade-mark on, *certain other articles*.

Vendors not to carry on trade, &c. (*b*).

2. Unless & until the pchaser shl make default for 30 days in paymt of any of the instalmts of the sd pchase-moy, or the intt thron or any pt throf as hrinar mentd, the vendors, their wives & widows, shl not nor shl either of them either alone or jointly or in ptnp with any other pson or psons whomsr & either directly or indirectly carry on, manage, or be concerned or interested in or act as a servant (*c*) of any pson concerned or interested in the business of —— within —— miles from —— afsd *or*, "in any pt of the United Kingdom," nor shl they or either of them authorise their or his or her names or name or the name

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As to sale of goodwill.

(*b*) As to agreements in restraint of trade, see *ante*, p. 39, note. The vendor of a goodwill has the right of setting up a rival business, but not of soliciting the customers of his old business: *Trego* v. *Hunt*, [1896] A. C. 7; *Gillingham* v. *Beddow*, [1900] 2 Ch. 242; *Curl Bros., Ltd.* v. *Webster*, [1904] 1 Ch. 685. The manager of a business sold under the Court: *Re Irish*, 40 Ch. D. 49; or the wife of a vendor of a goodwill: *Smith* v. *Hancock*, [1894] 2 Ch. 377; or a bankrupt whose goodwill has been sold by the trustee in the bankruptcy, even if he has concurred in assigning the goodwill: *Walker* v. *Mottram*, 19 Ch. D. 355; or a debtor whose goodwill has been sold by the trustee of a deed of assignment for the benefit of creditors: *Green* v. *Morris*, [1914]; 1 Ch. 562; may respectively set up a rival business and solicit the customers of the goodwill of the business sold. An assignment of the goodwill of a business carries with it the right for the purchaser to use the vendor's name, so far as such user does not expose the vendor to any liability by holding him out as the real owner of the business: see *Levy* v. *Walker*, 10 Ch. D. 436; *Gray* v. *Smith*, 43 Ch. D. 208; *Thynne* v. *Shove*, 45 Ch. D. 577; *Townsend* v. *Jarman*, [1900] 2 Ch. 698. An order will not be made prohibiting a man from carrying on his business in his own name unless he does so in a dishonest manner: *Cash, Ltd.* v. *Cash*, 86 L. T. 211; *Aktiengesellschaft, &c.* v. *Hommel*, 56 Sol. J. 399; *Teofani & Co., Ltd.* v. *Teofani*, [1913] 2 Ch. at p. 563; see *Lloyds & Dawson Brothers* v. *Lloyds*, 28 T. L. R. 338; *Kingston, Miller & Co.* v. *Kingston & Co.*, [1912] 1 Ch. 575. If the vendor is not restrained from carrying on the business elsewhere, the following clause may be adopted (as to which see *Baines* v. *Geary*, 35 Ch. D. 154):—"And will not at any time solicit any of the customers of the sd late firm." As to what stipulations may be agreed to on the sale of a business by the vendor's attorney acting under a general power, see *Hawksley* v. *Outram*, [1892] 3 Ch. 359. The cases as to the goodwill of a solicitor's business are collected, 44 Sol. J. 205. As to goodwill generally, see Lindley, 8th ed., pp. 506 *et seq.* For an assignment of goodwill, see *post*, p. 669.

(*c*) See *ante*, p. 43, note (*a*).

or style of —— & Co to be used for the ppose of any such business by any pson or psons within the limits afsd for the period of —— yrs from the date of this agrmt. And the vendors or either of them will within such period (except in case of such default as afsd), if & when required by the pchaser, recommend the sd intd new firm to the customers of the sd late firm.

Payment of purchase-money by instalments (*a*).

3. The pchase-moy, with intt at the rate of £—— p.c. p.a. from the —— day of —— next upon the unpd pt throf for the time being, shl be pd by the pchaser to the vendors as follows, (namely) the sd pchase-moy by four eql instalmts of £—— each, payable as follows, &c., & the intt on the pt of the sd pchase-moy for the time being remaing unpd shl be pd on the same respective days. Provd that if any instalmt of ppal or intt, or any pt throf, shl remain unpd after 30 days from the day so appted for the paymt throf, then the whole of the sd pchase-moy or of the unpd pt throf with the intt thron, shl become immedly due & payable.

Vendors' names may be used in proceedings for infringement.

4. So long as the pchaser shl in all respts pform his pt of this agrmt, the vendors shl, in the event of any infringemt by any other pson or psons of the sd brand or trade-mark —— by the use throf on any, *specified articles*, at the request of the pchaser, & upon being previously pperly indemnified against all costs, damages & expses in respt throf, allow their names to be used in any proceedings wch may be advised against the pson or psons guilty or suspected of such infringemt.

Title and conveyance.

5. The vendors shl on or bfe the —— day of —— next, show a good title to the sd goodwill & trade-mark to the reasble satisfon of the pchaser, & they & all other necessary pties (if any) shl, upon or at any time after the paymt of the sd pchase-moy in full, execute & do all such instrumts & things as shl be reasbly required by the pchaser, & at his

As to lien for unpaid purchase-money.

(*a*) See another form providing for payment by instalments, *ante*, p. 423, note. The vendor has a lien for unpaid purchase-money on sale of personal estate: *Davies* v. *Thomas*, [1900] 2 Ch. 462; *Re Stucley*, [1906] 1 Ch. 67. The vendor's lien for unpaid goods is regulated by the Sale of Goods Act, 1893, ss. 41—43. As to a sale in consideration of the vendor receiving a share of the profits by way of annuity, see the Partnership Act, 1890, ss. 2 & 3, which by s. 48 repeals Bovill's Act; and in consideration of an annuity not charged on profits, *Re Gieve*, 80 L. T. 737.

expse, for vestg in him the sd goodwill & the right to use the sd trade-mark, & for orwise carryg into effect this agrmt (*b*).

In witness, &c.

IX.

CONTRACT *for* Sale *of a* Business *as a* Going Concern (*c*).

Parties, A. (hrinar called the vendor), 1. B. (hrinar called the pchaser), 2. Parties.

1. The vendor shl sell & the pchaser shl pchase for the sum of £—— & upon the terms & subjt as hrinar mentd : Agreement for sale.

(*a*) All those leasehold hds, workshops, bldgs, & premes situate &c. & known as the —— Works with their appurts as the same are held, &c., *as in Prec. II.*, p. 398.

(*b*) This agreement is an agreement liable to duty under the Stamp Act, 1891, s. 59, goodwill (*Potter* v. *I. R. Commrs.*, 10 Ex. 147; *I. R. Commrs.* v. *Angus*, 23 Q. B. D. 579, decided under former Acts) and a trade mark: *Brooke & Co., Ltd.* v. *I. R. Commrs.*, [1896] 2 Q. B. 356, being "property" within the meaning of such section. Where goodwill can be treated as severed from land an agreement for the sale of the land and goodwill must be stamped with an *ad valorem* stamp in respect of the value of the goodwill: *West London Syndicate Ltd.* v. *I. R. Commrs.*, [1898] 2 Q. B. 507; but if the land is situated abroad, and there are no circumstances to rebut the presumption that the goodwill is annexed to the premises, it will be treated as locally situated out of the United Kingdom: *I. R. Commrs.* v. *Muller & Co., Ltd.*, [1901] A. C. 217; see also *post*, p. 666. As to stamp.

(*c*) Where the sale is by the liquidator of a company in a winding up by the Court subject to the control of the Court under s. 151 (2) of the Companies C. Act, 1908, or in a voluntary winding up, without the sanction of the Court, under s. 186 of that Act, the contract will be entered into by the liquidator in the name of the company as follows:——"The —— Co. Ltd. in liquidation (hrinar called the vendors) by A. of, &c., the liquidator." The company in whom the property remains vested notwithstanding the liquidation, will carry the contract into execution acting throughout by their liquidator. Sale by liquidator.

A sale in a voluntary liquidation may be effected under the Companies C. Act, 1908, s. 192, in consideration of shares in the purchasing company: see *Doughty* v. *Lomagunda Reefs, Ltd.*, [1902] 2 Ch. 837; and *cf. Payne* v. *Cork Co., Ltd.*, [1900] 1 Ch. 308; *Manners* v. *St. David's Gold, &c. Mines, Ltd.*, [1904] 2 Ch. 593; *Bisgood* v. *Henderson's Transvaal Estates, Ltd.*, [1908] 1 Ch. 743; but this section is not available in the case of a sale to a foreign company: *Thomas* v. *United, &c., Ltd.*, [1909] 2 Ch. 484.

(*b*) The goodwill of the business of —— now carried on by the vendor upon the premes including the benefit (*d*) of all pending contracts & engagemts to wch the vendor may be entitled in connection with the sd business & the right to use the name of the vendor in connection therewith & with the sd business & to represent the pchaser as carrying on the same as the successor in business of the vendor (*e*).

(*c*) All movable machinery, engines, plant, furniture, stores & utensils, horses, harness, carts, chattels & effects (other than stk-in-trade, book debts, cash in hand & at the Bank (*a*) which shl be in or upon the premes or in use in connection therewith on the day fixed for the completion of this contract (hrinar called the date fixed).

Apportionment of purchase-money (*b*).

2. The said pchase-moy shl be apportioned betn the pties for the pposes of stamp duty as follows, namely £—— shl be the price of the sd leasehd premes & goodwill & £—— shl be the price of the sd movable chattels transferable by delivery.

Tenant's fixtures, stock in trade, &c. to be taken at valuation.

3. The trade & tenant's fixtures & the stock in trade of the business in or upon the premes at the date fixed [& all book debts owing to the vendor in respt of the business at that

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(*d*) See *Bowater* v. *Mirror of Life Co.*, 50, W. R. 381.

(*e*) See *Thorneloe* v. *Hill*, [1894] 1 Ch. 569.

Book debts.

(*a*) Among the excepted items, book debts are sometimes and cash in hand and at the bank are usually omitted from the sale. An assignment of book debts included in a transfer of a business made *bona fide* and for value is expressly excepted from the operation of s. 43 of the Bankruptcy Act, 1914. An assignment of book debts and all securities for the same does not pass debts paid by cheque prior to the date fixed for completion where such cheques, though not met at that date, are subsequently duly met: *Felix, Hadley & Co.* v. *Hadley*, [1898] 2 Ch. 680.

As to purchase by valuation.

Purchase by valuation is usually adopted in the case of those items the value of which cannot conveniently be estimated by inspection prior to the sale: —*e.g.*, in the case of trade and tenants' fixtures in the estimation of the value of which a careful inspection combined with some technical knowledge is required: in the case of stock in trade, the amount of which varies from day to day; and in the case of book debts, the valuation of which necessitates reference to the books of the business. The movable chattels and effects are in the above precedent included in the purchase price, but the plan of purchase by valuation is frequently adopted also in the case of these assets. See the forms of Conditions of Sale, *ante*, p. 298, and pp. 385 *et seq.*

(*b*) As to apportioning purchase-money for stamp duty and as to the liability of the contract itself to *ad valorem* duty see *ante*, pp. 390, 421, and *post*, p. 666.

date (*c*)] shl be pchased & taken by the pchaser at a valuon to be made, at the joint expse of the vendor & pchaser, by Messrs. —— of &c., or failing such valuon at their fair value [due allowance being made in either case for all bad & doubtful debts (*c*)]. Any difference betn the pties as to what is to be considered as the fair value throf shl be referred to arbitron in accordce with Clause **20** hrof (*d*).

4. *Provision as to insurance,* p. 333, *f.* **5**, *saying* "pending completion."

5. *Payment of purchase-money & completion,* p. 391, *saying* "togr with the amt of the afsd valuon if the same shl be ascertained."

Provision extending time for payment of valuation moneys.

6. Neither party shl be entitled to delay complon on the ground that the amt of such valuon or fair value as afsd shl not have been ascertained at the date fixed; but the amt throf with intt thron at the rate hrinar mentd from the date fixed until paymt shl from & after complon be a charge upon the sd leasehd premes & good will & shl be payable by the pchaser on demand at any time after the same shl have been ascertained. For the ppose of securing such charge, the title deeds of the ppty shl be deposited on complon at the —— Bank in the joint names of the vendor & pchaser.

Continuance of business by vendor until completion (*e*).

7. The sd business as now carried on by the vendor shl be continued & carried on by him at his own risk & cost up to the date fixed, & as from that date down to the actual complon of the purchase, for the benefit & at the sole risk & cost in all respts (including the manager's salary) of the pchaser.

Possession and interest —appropriation of profits.

8. All profits in respt of the said business and premes up to the date fixed (except profits in respect of any stock then already sold and paid for but not removed, the purchase-moy for which shall be allowed for in the valuation of stock to be

(*c*) The following is an alternative method of dealing with book debts, viz.:—"The book debts owing to the vendor in respt of the business at the date fixed shl be pchased & taken by the pchaser at the amts at which they then stand in the books of the business witht any discount or allowance for bad or doubtful debts." Such a clause will include bills receivable entered in the bills receivable book: *Dawson* v. *Isle*, [1906] 1 Ch. 633; cf. *Felix, Hadley & Co.* v. *Hadley, sup.*

(*d*) See Williams, V. & P., 3rd ed., 55, and *ante*, pp. 296 *et seq.*

(*e*) See *ante*, p. 385, note (*e*).

made as afsd) & all outgoings in respt throf up to the same date (including ascertained liabilities then previously incurred in respt of the sd business but not discharged (*e*)) shl as the case may be, belong to or be discharged by the vendor And from the date fixed all outgoings & losses (including all liabilities & outgoings arising out of any uncompleted contracts or engagemts [& all future claims in respt of completed contracts or engagemts] shl be discharged by & the rents, profits or posson (including the receipts from the sd business) shl belong to the pchaser, & the rents, profits & outgoings in respt of the sd leasehd hds shl (if necessary) be apportioned for the ppose of this provon, & the pchaser shl on complon pay to the vendor the proportion belonging to the latter of the current rents less the proportion to be borne by him of the current outgoings. If from any cause whatever, &c., *continue as in Prec. I.*, p. 248.

Actual possession and control of business.

9. Until complon of the pchase the vendor shl retain actual posson of the ppty & the right to control the conduct & managemt of the sd business, but witht prejudice to the provons as to the approprion of profits & liability for outgoings & losses hrinbfe contd.

10. *Production of lease, purchaser to have notice of contents, &c.*, p. 398.

11. *Provisions as to delivery of abstract*, p. 395, *with appropriate special condon as to commencement & evidence of title, &c.*, p. 299 *et seq., and as to identity, expenses, &c., as at* p. 253.

12. *Evidence of performance of covenants*, p. 266.

[*Licence to assign*, p. 324.]

Provision as to conveyance.

13. On paymt of the balance of the pchase moy, togr with the amt if then ascertained of the afsd valuon, the pchaser shl be entitled to pper assurces or transfers of the premes from the vendor & all other necessary pties (if any) to be prepared by & at the expse of the pchaser.

Covenants by vendor and purchaser respectively

14. The assurce of the leasehd premes shl be executed in duplicate at the expse of the pchaser & shall contain :—

(*a*) A covt by the pchaser to pay, observe & pform & to indemnify the vendor against the rents & covts of the lease.

(*e*) It is not unusual to provide that the debts ascertained but not immediately payable shall be discharged by the purchaser and the amount allowed in reduction of the purchase-money.

(*b*) A covt by the pchaser to pay & discharge & to indemnify the vendor against all outgoings & losses in respt of the sd business to be borne by the pchaser in accordce with the provons of this agrmt. to be contained in conveyance.

(*c*) A covt by the vendor that neither the vendor nor his wife nor widow shl either alone, *&c., as at* p. 419, *mutatis mutandis.*

[*Provisions as to covenants for title and muniments,* pp. 255, 370.]

15. Upon complon a circular in a form to be approved by the vendor's solors shl be sent by the vendor to all his customers & agents announcing the transfer of the sd business & goodwill to the pchaser. Circular.

16. *Provision as to time for delivery of requisitions,* p. 257.

17. *Rescission,* pp. 258 *et seq.*

18. *Misdescription not to annul sale,* p. 259.

19. [*Avoidance of contract on default of vendor.*]

20. *Arbitration Clause.* See ARBITRATION.

[*As to costs,* p. 396, note.]

IN WITNESS, &c.

X.

AGREEMENT EXTENDING *the* TIME FOR COMPLETION *of a* PURCHASE *and otherwise* MODIFYING *the* CONTRACT. SUPPLEMENTAL *to the* ORIGINAL CONTRACT (*a*).

ARTICLES of AGRMT made, &c., betn A. (hrinar called the vendor), of the one pt, & B. (hrinar called the pchaser), of the other pt, suppl to an agrmt dated, &c., & made betn the same pties for the sale by the vendor to the pchaser of the —— este for the sum of £—— (hrinar called the origl agrmt), IT IS HBY AGRD as follows :— Parties.

1. THE time for complon of the sd pchase shl be extended from the —— day of ——, being the day mentd in the origl agrmt, to the —— day of ——, & in this respt time shl be of the essence of the contract, but nevertheless the pchaser may Extension of time for completion.

(*a*) This may be used for a tenant for life selling under the S. L. Act, 1925. See the power to vary contracts in s. 90.

complete the pchase on any earlier day, on givg 14 days' notice of his intention in that behalf to the vendor or his solor.

Requisitions.

2. The pchaser havg accepted the title shown by the vendor as a good & perfect title accordg to the origl agrmt, no further objection or requon in respt of the title (except as to any matter arisg after the date of this agrmt) shl be made by him.

Possession and rent in lieu of interest (*b*).

3. The pchaser may forthwith, or at any time, enter upon & retain posson of the premes, as tenant of the vendor until the sd —— day of —— at the annl rent of £—— (being equivalent to intt on the sd pchase-moy at the rate of £—— p.c. p.a.), such rent to commence from the date of this agrmt, whether such posson is taken or not, & to be pd on the complon of the pchase or on demand, & to be accepted by the vendor in satisfon of any intt on the pchase-moy payable prior to the sd —— day of —— under the origl agrmt, the pchaser paying all outgoings & keepg the bldgs pperly insured against fire, & not makg any structural alternons thrin, *if leasehd, add* " & pformg the covts of the lease other than the covt for paymt of rent."

Purchaser to pay the difference in case consols rise.

4. If the price of 2½ p.c. Consold Stk shl, on the day of actual complon of the pchase, be higher than the price throf on the —— day of ——, *the day of complon under the origl agrmt*, the pchaser shl, togr with the sd pchase-moy & rent, pay to the vendor such a sum of moy as shl be eql to the price or value of the difference betn the amt of such Consold Stk wch the sd pchase-moy wd have pchased on the sd —— day of ——, & the amt of stk wch the same sum will pchase on the day of actual complon of the pchase, at the highest price of the day in each case.

Costs.

5. All the costs & expses incurred by both the sd pties in relation to the negotion, preparon, & exon of this agrmt shl be pd by the pchaser.

Original agreement as varied to be in force.

6. The origl agrmt, as hby varied, shl remain in full force, &, subjt to the provons of this agrmt, shl be carried into effect as if the sd —— day of —— were thrin substituted for the sd —— day of —— throughout such agrmt.

In witness, &c.

(*b*) As to the position of a purchaser entering before completion under a stipulation in the contract, see *Dotesio* v. *Biss*, 56 Sol. J. 612.

XI.

AGREEMENT *for* SUB-SALE *of* REAL ESTATE PENDING INVESTIGATION *of* TITLE *at an increased price, to be* ENDORSED *on* ORIGINAL CONTRACT.

MEM OF AGRMT made the —— day of ——. Betn A., of, &c., of the one pt, & B., of, &c. (hrinar called the pchaser), of the other pt. WHAS since the date of the within written agrmt the abstract of title to the within mentd ppty has been delivered to Messrs. ——, the solors of the sd A., who have taken the opinion of counsel upon the title & forwarded requons thron to Messrs. ——, the solors for the within named vendors (*a*). Parties. Recitals.

NOW IT IS HBY AGRD as follows:—

1. THE sd A. agrees to sell, & the pchaser agrees to pchase, subjt to the within written agrmt the ppty comprised thrin, togr with the benefit of the sd agrmt for the sum of £——. Agreement for sale.

2. BY way of addonal conson the pchaser shl upon complon of the within written agreemt pay to the sd A.: (i) the charges of Messrs. ——, *land agents*, who acted for the sd A. in the matter of the pchase amtg to the sum of £——, & (ii) the legal costs & expses incurred by the sd A. to his sd solors in the matter of the sd pchase [wch are agrd up to the psnt time at the sum of £——, includg the costs of these psnts], & any further costs wch the sd A. or his repves may incur or be put to in carrying out the pchase, & enablg the pchaser to complete the same or orwise arisg out of these psnts. Costs.

3. THE pchaser shl pform & carry out the within written agrmt accordg to the tenor throf, or, if he shd make default in so doing or rightfully refuse to carry out the same, will indemnify the sd A. against all actions, claims, demands, & expses wch the latter may incur or sustain by reason of his having entered into the sd agrmt. Indemnity.

4. IF the within-named vendors shl object to the pchaser Purchaser's.

(*a*) As to the position of the sub-purchaser, see *Crabtree* v. *Poole*, L. R. 12 Eq. 13. Upon the execution of this contract the purchaser's solicitors should require the abstract of title, requisitions and answers thereto, if any, and opinion of counsel, together with a copy of any correspondence which may have taken place, to be handed over to them.

investigatg the title & makg objections & reqons on his own account, the pchaser may instruct his solor to act on behalf of the sd A. as well as of the pchaser in all matters connected with or arisg out of the investigation of the title: but so that the pchaser on so instructg his solor shl obtain from him a letter (to be handed to the sd A.) admittg that he is to have no claim upon the sd A. for his charges & disbursemts, & so that the pchaser shl keep the sd A. indemnified against all costs, expses & liabilities conseqt upon the user of his name in connection with the investigon of the title or any matter connected with or arisg out of such investigon.

As WITNESS, &c.

XII.

AGREEMENT *for* COMPENSATION *for* EXTINGUISHMENT *of* MANORIAL INCIDENTS (*a*).

Manor of —— in the county of ——.

Parties. AN AGREEMENT made the —— day of —— 19— BETWEEN A. B. of, &c. (lord of the above mentd manor), of the one pt & C. D. of, &c. (the owner of the land described in the First Schedule hrto formerly copyhd of the sd manor, but now enfranchised by virtue of the L. P. Act, 1922), of the other pt.

Agreement for compensation. **1.** Psuant to the L. P. Act, 1922, it is agrd that the compenson for the extinguishmt of the manorial incidents saved by Part V. of that Act (*b*) affectng the sd land [& of the rts of the lord in or to any mines & minls in or under the sd land & the sportg & other rts affectg the same preserved by the Twelfth Schedule to the Act (*c*)] shl be the sum

(*a*) The above form is based on the form given in the thirteenth schedule to the L. P. Act, 1922. That form is more complicated than the present one, as it assumes that the manor and also the enfranchised land are in settlement and the manor also in mortgage.

(*b*) The manorial incidents saved by Part V. of the Act are (1) quit rents, chief rents, and other similar rents, or payments; (2) fines, reliefs, heriots, and dues (including fees payable to stewards); (3) forfeitures (other than forfeitures for alienation); and (4) rights as to timber.

(*c*) Though the mines and minerals included in the copyhold tenement are enfranchised, the rights in relation thereto are not affected unless expressly included as by the words in square brackets. If the tenant releases his rights in the minerals and grants any facilities for working the same, the release and grant may be inserted in the agreement which should then be executed under seal.

of £—— with intt thron payable half-yearly at $5\frac{1}{2}$ p.c. p.a. from the date hrof until paid [*or* the ppal sum of £—— to be pd by twenty equal instalmts the first instalmt to be pd on the 1st day of January next with intt at $5\frac{1}{2}$ p.c. p.a. on the sd ppal sum from the date hrof, and a further instalmt with intt at the like rate on so much of the sd ppal sum as for the time being remains unpd to be pd on every subseqt 1st day of January until the sd ppal sum shall be fully pd (all intt up to date being pd with the instalmts) and so long as any of the sd instalmts & intt remain payable a terminable & variable rent-charge commencng from the date hrof & accruing from day to day, but payable at the same time as the instalmts & intt shl issue out of the sd land of an amnt equal to the sd instalmts & intt from time to time payable, & so as to secure the same (*d*)].

Acknowledgment for production by lord.

2. The sd A. B. hby acknowes the right of the sd C. D. to productn of the documts mentd in the first pt of the Second Schedule hrto, & to delivery of copies throf and hby undertakes for the safe custody throf.

Acknowledgment for production by ex-copyholder.

3. The sd C. D. hby acknowes the right of the sd A. B. to productn of the documts mentd in the second pt of the Second Schedule hrto, & to delivery of copies throf, & hby undertakes for the safe custody throf.

Steward's compensation and lord's costs.

4. The steward's compenson & all costs & expenses pd or incurred by the lord & recoverable from the tenant in respt of this extinguishmt have been included in the compenson money afsd.

As Witness, &c.

First Schedule.

Description of the land affected by the manorial incidents (*e*).

Second Schedule.

First Part.

Particulars of documents relating to the sd manor & retained by the sd A. B.

(*d*) If the compensation is not to be paid in one gross sum the agreement should be executed in duplicate.

(*e*) The description will be taken from the Court Rolls unless a new description is agreed to. In most cases the description on the Court Rolls is obsolete, and the tenant would do well to have a new description inserted. Any additional costs incident to the preparation of a plan or new description will be payable by the party requiring the same.

Second Part.

Particulars of the documents relating to the sd land & retained by the sd C. D.

XIII.

FORM *of* RECEIPT *to be* ENDORSED *on the* COMPENSATION AGREEMENT (*f*).

The manor of —— in the county of ——.

Receipt for fines, etc.

1. The within named lord of the above mentd manor hby acknowes that all rents, fines, reliefs, heriots, & fees payable in respt of the land referred to in the within agrmt have been duly discharged.

Receipt for compensation money.

2. The sd lord hby acknowes the rect of the compenson money by the within written agrmt agrd to be pd & all intt (if any) due thron (*g*).

Dated this —— day of —— 19—.

(*f*) See Form No. 2 in the thirteenth schedule to the L. P. Act, 1922.

(*g*) Clause 2 will only be used when the compensation is paid in a single gross sum. If a rent-charge is created separate receipts must be given as and when each instalment is paid.

CONVEYANCES ON SALE.

PRELIMINARY NOTE.

Law of Property Act, 1925.

Part I. of the L. P. Act, 1925, has effected constructive reforms in the law of tenure of land in England and Wales, and has instituted in relation to the sale and transfer of land a new system of conveyancing. The details of the new system are to a large extent worked out in the remaining parts of the same Act. But the Act must be read with the L. C. Act, 1925, and other Acts of that year in which further provisions designed to facilitate the working of the new system as a whole are contained, more especially the Admon. E. Act, 1925, in which alterations are made in the law of descent and devolution of real estate. In the present note it is intended to deal as concisely as possible with the provisions of Part I. of the L. P. Act, 1925, and such of the remaining sections of the Act as must be referred to in order to explain the construction and effect of the Precedents which follow.

Legal estates in land.

Section 1 enacts that the only estates in land capable of subsisting or of being conveyed or created at law, are (*a*) an estate in fee simple absolute in possession; and (*b*) a term of years absolute. These estates and—somewhat illogically—the several interests in and charges over land specified in sub-s. 2 of the same section are elsewhere in the Act (see sub-s. 4) called "legal estates," and the owner of any such estate is called "an estate owner." Estate ownership is, therefore, the basis of present-day conveyancing.

Estate owner.

As in the case of registered land there may be several registered owners of the same land, so in the case of unregistered land there may be several estate owners of the same land. Each is the estate owner of the land in respect of his estate or interest therein.

Legal estate in fee simple—must be in possession.

The seisin of the owner of a freehold estate in fee simple at common law enabled him to grant out of his estate other freehold estates, such as, an estate for life or an estate tail, either of which estates when granted were held of the grantor or donor and constituted with the estate in fee simple remaining in the grantor or donor one seisin. As neither an estate for life nor an estate tail can now subsist or be created at law, an estate in fee simple, which at common law might have been an estate in possession, or in remainder or reversion, must now be an estate in possession, as indeed is stated in the first section of the Act. Seisin, though shorn to this extent of some of its incidents, is not abolished by the Act; nor is the necessity of a continuous seisin, which was insisted upon at common law, dispensed with. An estate in fee simple cannot, therefore, be created to commence *in futuro*.

Cannot be made to commence *in futuro*.

Rules of limitation.

Three further rules are prescribed by the Act in reference to the limitation of estates:

Infants.

1. A legal estate in fee simple in land cannot be limited to an infant: s. 1 (6).

Tenants in common.

2. A legal estate in fee simple in land cannot be limited to several persons as tenants in common: s. 1 (6).

Joint tenants.

3. A legal estate in fee simple in land cannot be limited to more than four persons: ss. 34 and 36. An exception to this rule is made by the T. Act, 1925 (s. 34 (3)), in the case of trustees for charitable, ecclesiastical, or public purposes.

Defeasible fee simple.

A defeasible fee not being a fee simple absolute within the meaning of the Act cannot be effectually limited at law; but a fee simple which, by virtue of the Lands Clauses Acts, the School Sites Acts, or any similar statute, is liable to be divested and, similarly, a fee simple vested in a corporation and liable to determination by reason of the dissolution of the corporation is declared to be a fee simple absolute for the purposes of the Act (s. 7).

Terms of years absolute.

A term of years absolute is defined by the Act to be a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment of waste, subject or not to another legal estate, and either certain or liable to determination by notice, &c., or in any other event other than the dropping of a life or the determination of a determinable life interest: s. 205 (1) (xxvii).

Rules of limitation applicable to legal terms, interests in and charges over land.

The three rules mentioned above as applicable to the limitation of legal estates in fee simple apply equally to the limitation of legal terms of years and apply also to the creation of legal interests in and charges over land such as are specified in s. 1 (2) of the Act as capable of subsisting or being conveyed or created at law; but with the exception made in the case of a legal easement by s. 187 (2), which provides that nothing in the Act is to affect the right of a person to acquire, hold, or exercise an easement, right, or privilege over or in relation to land for a legal estate in common with any other person, or the power of creating or conveying such an easement, right, or privilege.

Concurrent legal estates.

A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of the Act: s. 1 (5). Legal terms, whether for mortgage purposes or otherwise, may therefore be created out of the fee simple, and legal sub-terms out of a head term. So also legal easements, rent-charges, and charges by way of legal mortgage may be created for estates commensurate with the estate out of which they are respectively granted; and the estate owner in respect of a legal rent-charge issuing out of land may create a further rent-charge to be issuing thereout in like manner as the same could have been made to issue out of land: s. 122.

Powers.

By s. 1 (7) of the Act all powers of appointment over or to convey or charge land or any interest therein whether created by statute or other instrument or implied by law except such powers as are therein mentioned are made to operate in equity only. Powers excepted from the operation of the section are powers vested in and exercisable by or in the name of a legal mortgagee or an estate owner in right of his estate, and exercisable by him or by another person in his name and on his behalf. And by s. 9 (1) it is provided that every conveyance by a person authorised under any statutory power to convey in the name or on behalf of an estate owner, and every conveyance made under any power reserved or conferred by the Act which is executed for the purpose of conveying or creating a legal estate shall operate to convey or create the legal estate disposed of in like manner as if the same had been a conveyance executed by the estate owner of that estate. It follows that not only all powers heretofore operating as declarations of use but all powers operating by way of transmutation

of possession (except as expressly excepted) can henceforth operate only in equity and that the excepted powers of conveying land are such only as are exercisable by or in the name or on behalf of an estate owner, *e.g.* the paramount powers of a mortgagee or personal representative.

Equitable interests in land.

Generally speaking, all interests in land which prior to the Act could have been created as legal estates whether by transmutation of possession at common law or by means of the Statute of Uses but which cannot now subsist as legal estates, may be created as equitable interests (s. 4 (4). Included among such interests are equitable interests for life, in tail and in fee simple (whether absolute or determinable), in remainder or in reversion, or *in futuro ;* but every beneficial interest intended to be held in common in possession or in joint tenancy which, if it were not otherwise provided, might have subsisted in land in equity is by virtue of s. 34 in the case of an interest in common, and by s. 36 in the case of an interest in joint tenancy converted into an equitable interest in the proceeds of sale of that land. An equitable beneficial interest in common in reversion may be created as provided by the S. L. Act, 1925. See s. 36 of that Act.

Equitable interest in common in reversion.

Overreaching of equitable interests.

Section 2 of the L. P. Act gives formal expression to the underlying principle of this part of the Act which is that a purchaser, acquiring from an estate owner his legal estate, shall take it free from all such equities as are fairly susceptible of being provided for out of the purchase money ; and as regards equities not susceptible of this treatment subject in the case of equities created previously to the commencement of the Act, to those of which the purchaser has received notice as under the pre-existing law and subject in the case of equities created after 1925, to those which are duly registered pursuant to the L. C. Act, 1925.

Section 2 of the L. P. Act, 1925 (sub-s. 1), enacts that a conveyance to a purchaser of a legal estate in land shall overreach any equitable interest or power affecting that estate whether or not he has notice thereof in any of the following four cases that is to say, (1) If the conveyance is made under the powers of the S. L. Act, 1925, and the equitable interest or power is capable of being overreached thereby, and the purchase money is paid in the prescribed manner ; (2) if the conveyance is made by trustees for sale, and the equitable interest or power is capable of being overreached by them (whether under the provisions of sub-s. 2 of the same section or otherwise) and the purchase money is paid in the prescribed manner ; (3) if the conveyance is made by a mortgagee or personal representative in the exercise of his paramount powers and the equitable interest or power is capable of being overreached thereby, and the purchase money is paid to the mortgagee or personal representative ; and (4) if the conveyance is made under an order of the court and the equitable interest or power is bound by such Order and the purchase money is paid into or in accordance with the order of the court. The sub-section is qualified by sub-s. 5 which reinstates in effect the previously existing law in regard to purchasers with notice of certain interests created before the commencement of the Act, viz. restrictive covenants, equitable easements, the interests under a puisne mortgage within the meaning of the L. C. Act, 1925, until transfer thereof after the commencement of the Act, and the benefit of an estate contract as defined by the Act until conveyance thereof after the commencement of the Act.

Sub-section 2 of the same section relates to paramount equitable interests or powers not capable of being overreached by a sale under any existing trust for sale or under the powers of the S. L. Act, 1925, and enables the

estate owner in this case to create in the prescribed manner a trust for sale which may be exercised so as to overreach the subsisting paramount equities: see the form of Conveyance in trust for sale pursuant to this sub-section, *post, sub tit.* "MISCELLANEOUS PRECEDENTS." It is, however, expressly provided by sub-s. (3), that sub-s. 2 is not to extend to certain equitable interests therein mentioned. See these equitable interests discussed in the note to the above mentioned Precedent.

Section 2 of the Act is in fact the foundation upon which the present practice of conveyancing stands. Its importance lies in its application to the diversity of interests which, resulting from the conversion of legal estates into equitable interests as above described, can now subsist only as equitable interests but are nevertheless susceptible of being provided for out of the purchase money upon a sale. All or nearly all such interests are brought by the Act within the category of interests in settled land or within the category of interests in the proceeds of the sale of land with which a purchaser is not to be concerned. It is left to the estate owner to gather up the small residue of such interests, and either under s. 2 (2) of the Act or under s. 21 of the S. L. Act, 1925, to consign them to whichever category he may think proper.

Effect of conveyance of limited estate.

The limitation to a purchaser of an estate in land which prior to the Act would have been effectual to pass a limited estate in the land such as cannot now be created at law, *e.g.* an estate for life or in tail, will take effect by virtue of s. 4 of the Act as an equitable interest in land and will apparently constitute a trust instrument for the purpose of the S. L. Act, 1925. See s. 9 of that Act. But a similar limitation in a voluntary conveyance unless framed to take effect as a declaration of trust would apparently fail of effect altogether as an imperfect gift.

Effect of conveyance of legal estate,

Limitations which do not comply with the requirements of the Act in relation to the limitation of estates to infants, tenants in common, and joint tenants, result as follows: First, in the case of infants:

to infant's beneficially;

1. A conveyance to an infant or to several infants jointly, if (i) for his or their own benefit, operates as an agreement for valuable consideration to execute a settlement in his or their favour: L. P. Act, 1925, s. 19 (1); S. L. Act, 1925, s. 27 (1); and if (ii) upon any trust, operates as a declaration of trust but does not pass the legal estate.

to infants upon trust;

2. A conveyance to an infant jointly with a person of full age, if (i) for their own benefit constitutes the person of full age an estate owner, and either a trustee for sale: L. P. Act, 1925, ss. 19 (2) and 35, or tenant for life: S. L. Act, 1925, s. 19; and if (ii) upon any trust, operates as though the infant were not named therein but without prejudice to any beneficial interest intended for him: L. P. Act, s. 19 (5).

to infant and person of full age beneficially;

Secondly, in the case of tenants in common. A conveyance to several persons as tenants in common operates, unless made by way of mortgage, as a conveyance to them, or, if there are more than four, then, to the four first named as joint tenants in trust for sale: L. P. Act, 1925, ss. 34 (2) and 35. If the conveyance is by way of mortgage it operates to vest in them or in the four first named, as the case may be, a term of years absolute as joint tenants, subject to cesser on redemption: s. 34 (2). A conveyance to several persons as joint tenants, unless the land is settled land, operates to vest the land in them in trust for sale in like manner as if the persons beneficially entitled were tenants in common; but the joint tenancy will not be thereby severed in equity: s. 36 (1). A joint tenant may release his interest to the other joint tenants and may sever the joint tenancy in equity but not at law: sub-s. (2).

the same upon trust to tenants in common,

Section 39 incorporates the Transitional Provisions set out in the First Schedule to the Act. Part I. of the Schedule has converted legal estates, interests, and charges in or over land which were subsisting at the commencement of the Act but were not afterwards capable of subsisting as such, into equitable interests, has prevented these interests from failure, and has preserved their priority over other equitable interests. The remaining parts of the schedule (with the exception of Part IV., which deals with land held at law or in equity in undivided shares) are concerned solely with legal estates. Their general effect has been to get in bare outstanding legal estates, and where legal estates were at the commencement of the Act subsisting in persons in whom it was not in accordance with the policy of the Act to allow them to remain vested, to vest them in the persons who ought to hold them as estate owners for the purposes of the Act upon the trusts and subject to the powers, provisions, rents, covenants, conditions, rights of redemption (as respects terms of years absolute) and other rights, burdens, and obligations (if any) upon or subject to which the same ought to be held. These provisions though expressed in general terms operate, by way of statutory rectification of the titles effected thereby, to vest the proper estate by law in the proper persons ; and, for the purpose of deducing title to an estate owner at the present day, must be read as supplemental to the documentary title.

by way of mortgage, to joint tenants. Rectification of titles effected by the transitional provisions of the Act.

To take a simple example. If on perusal of the abstract it is found that the title is sufficiently deduced to three persons, all of whom are of full age as tenants in common in fee simple free from any incumbrances affecting their undivided shares, the provisions of the First Schedule, Part IV., paragraphs 1 (3), will apply to vest the property in those three persons as joint tenants upon the statutory trusts: see *post*, p. 436. Upon a subsequent sale of the property the conveyance to the purchaser may be framed as if the same result had been effected by deed executed between the proper parties and in manner appropriate for the purpose. It will be for the purchaser's adviser to satisfy himself that the provisions of the schedule apply; but being satisfied as to this it will not be necessary for him to frame the conveyance so as to disclose the earlier title. The statutory provisions, in the case supposed, will have superseded the last abstracted conveyance as effectually as if, prior to the Act, the former tenants in common had by conveyance to themselves, operating under the Statute of Uses, conveyed the property to themselves upon trust for sale. In such a case, therefore, it will be sufficient to recite that, by virtue of s. 39 of the Act, the property formerly held in common has become vested in the vendors as estate owners in respect of the fee simple thereof upon the statutory trusts.

Part II. has made provision for the merger of satisfied terms created out of leasehold land (paragraph 1) and also for the merger of legal estates of which the owner of any other legal estate was then entitled to call for the surrender or release (paragraph 2), and for the getting in of bare outstanding legal estates (paragraphs, 3, 4, and 6). The vesting of the legal estate in settled land in the tenant for life, statutory owners, personal representatives, or Public Trustee is provided for in paragraphs 5 and 6.

Vesting of legal estates.

Part III. of the same schedule has made provisions for the vesting of legal estates vested in infants at the commencement of the Act as follows :

1. Where the legal estate in land was vested in one or more infants beneficially it has been made to vest in accordance with the Transitional Provisions contained in the Second Schedule to the S. L. Act, 1925 ; but where it was vested solely in an infant as personal representative, trustee,

Provisions as to vesting of legal estates formerly

vested in infants, beneficially, as personal representative, trustee or mortgagee, with others of full age beneficially, as personal representatives, trustees, or mortgagees.

or mortgagee then it has been made to vest with the mortgage debt (if any) and the interest thereon in the Public Trustee pending the appointment of trustees as therein provided upon the proper trusts but subject to a prohibition against acting in the trust until requested in writing to act by or on behalf of the persons interested and with the right before accepting the trust to convey to a person of full age who becomes entitled.

2. Where the legal estate in land was vested in an infant jointly with one or more other persons of full age beneficially, it has been made to vest in such other person or persons in trust for sale but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale. But if it were vested in an infant jointly with one or more persons of full age as personal representatives, trustees, or mortgagees then it has been made to vest with the mortgage debt (if any), and the interest thereon in such other person or persons of full age upon the proper trusts.

Provisions subjecting land held in undivided shares to trust for sale.

Part IV. of the same schedule contains provisions for subjecting land, held at law or in equity in undivided shares vested in possession, to trusts for sale. These provisions operate as follows:

Where vested absolutely and beneficially.

1. Where at the commencement of the Act land (not being settled land) was vested absolutely and beneficially in several persons as tenants in common, it has been allowed to remain vested in them, but as joint tenants upon the statutory trusts, *i.e.* in trust for sale, provided that: (i) they were all of full age; and (ii) they were not more than four in number; and (iii) none of them had encumbered his share.

If any one of these conditions was lacking the land has been vested in the Public Trustee (free from incumbrances affecting undivided shares, and free from any incumbrance affecting the entirety which was not secured by a legal term of years absolute) upon the statutory trusts, *i.e.* in trust for sale: see paragraph 1 (4); any such incumbrance being among the interests to which effect must be given under the statutory trusts: see s. 35. The Public Trustee, as usual where land is vested in him by the Act, is prohibited from acting unless requested in writing so to do by persons interested, in this case, in more than one half of the land or the income thereof, who with the consent of the Public Trustee if he has been requested to act and has accepted the trusts but otherwise without his consent, and in any case with the consent of any incumbrancers of undivided shares (with which last mentioned consent, however, a purchaser is not concerned) may appoint new trustees in the place of the Public Trustee, and vest the land in such new trustees upon the statutory trusts above referred to and free from the incumbrances to which effect must be given under the statutory trusts. In the alternative, the persons interested may apply to the court to appoint trustees, and if they neither request the Public Trustee to act nor apply to the court for the appointment of new trustees in his place within three months of being requested so to do by any person interested then any person interested, may apply to the court for the appointment of such new trustees.

Where vested in trustees or personal representatives.

2. Where at the commencement of the Act the land was vested in trustees or personal representatives in trust for several persons as tenants in common it has been allowed to remain vested in them, but upon the statutory trusts above mentioned, and free from any of the incumbrances to which effect must be given under those trusts, but subject in the case of personal representatives to their rights and powers for the purpose of administration.

Where settled.

3. Where at the commencement of the Act, the entirety of the land

was settled land, held under one and the same settlement, it will now have become vested in the trustees for the time being (if any) of the settlement as joint tenants, or, if there were none, in the Public Trustee, or, if trustees of the settlement were appointed before the Public Trustee accepted the trust, then in such trustees as joint tenants; and in any case upon the statutory trusts above mentioned free from any incumbrances to which effect must be given under those trusts. If the entirety of the land were not settled land, or not held under one and the same settlement, it will have become vested directly in the Public Trustee upon the statutory trusts: paragraph 1 (4). The Public Trustee, if the land has become vested in him, is prohibited from acting in the trusts unless requested in writing so to do by or on behalf of persons interested in more than an undivided half of the land or the income thereof; and after he has been requested to act and has accepted the trust no trustee can be appointed in his place without his consent, except by an order of the court.

Mortgages upon entirety.

The trust for sale is imposed in all the above cases without prejudice to mortgages affecting the entirety of the land at the commencement of the Act, and which under the Act are secured by legal terms absolute, including mortgages which in substance affect the entirety of the land though in form are secured separately upon all the undivided shares: paragraph 1 (7). Certain restrictions which do not concern a purchaser are imposed upon the exercise by the trustees of the trust for sale.

Where the subject of a contract for sale or partition action.

Land in respect of which a subsisting contract for sale was in force at the commencement of the Act, provided the contract were completed in due course, and land in respect of which a partition action was pending at such commencement, provided that a partition or sale were subsequently made in such action, has been exempted altogether from the operation of the above provisions: paragraph 1 (10); and title could be made under the contract for sale as if the Act had not been passed.

Undivided shares falling into possession after 1925.

It will be observed that thus far the provisions of Part IV. of the First Schedule are confined to the case of land held in undivided shares vested in possession. Where undivided shares in land created before the commencement of the Act fall into possession after such commencement, and the land is not settled land when the shares fall into possession, the personal representatives (subject to their rights and powers for the purposes of administration) or other estate owners in whom the entirety of the land is vested are to give effect to those provisions by an assent or a conveyance in like manner as if the shares had fallen into possession the land will be held upon the statutory trusts: paragraph 2.
immediately before the commencement of the Act, and in the mean time

Party walls.

Part V. of the same schedule effects a partition vertically between the respective owners of party walls and other party structures which at the commencement of the Act were held in undivided shares.

Tenancies by entireties.

Part VI. of the same schedule has converted tenancies by entireties into joint tenancies, and Parts VII., and VIII., deal with the conversion of mortgages existing at the commencement of the Act into mortgages by demise or sub-demise, as the case may be. As to which see *post*, p. 539.

Mortgages.

Cases where there may be more than four joint tenants

Although s. 36 of the Act enacts that where a legal estate not being settled land is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held upon trust for sale in like manner as if the persons beneficially entitled were tenants in common, and thus renders applicable the provisions of s. 34 (2) for securing that not more than four persons shall under any limitation of a legal estate made after the commencement of that Act become entitled as estate owners in trust for

of a legal estate.

sale, there is no provision in the first schedule to the Act which, where title is deduced to more than four persons as joint tenants either beneficially or as trustees in trust for sale or otherwise, effects rectification of the title so as to reduce the number of joint tenants to four only, but no new trustees can in such case be appointed until the number is reduced to less than four: T. Act, 1925, s. 34.

The conveyance.

The following are points to be attended to in the framing of the conveyance:

Lands lie in grant only.

All lands lie in grant only (s. 51), and every conveyance of a legal estate in land takes effect as at common law by transmutation of possession but without the necessity of actual entry. Every conveyance of a legal estate in land must be by deed (s. 52), and the instrument of conveyance being a deed *inter partes* "to effect its objects" (Norton on Deeds, p. 14) "has the effect of an indenture though not indented or expressed to be an indenture" (s. 56 (2)). This was the law under the repealed s. 5 of the R. P. Act, 1845, provided that the deed purported to be an indenture. The deed may be described at the commencement thereof or otherwise as a deed simply or as a conveyance (s. 57); and cf. Fifth Schedule of the Act, Form No. 5, which runs "This Conveyance is made, &c., . . . Now This Deed Witnesseth" &c. The plan adopted in the following forms is to describe the nature of the deed at the commencement as "This Deed of Conveyance," &c., and to continue as in the official form.

Deed to have effect of indenture.

Supplemental deeds.

As to Supplemental Deeds, see s. 58, *ante*, p. 88.

Parties to conveyance —grantor.

The estate owner, or, in the case of trustees for sale, personal representatives or persons together constituting a tenant for life, the estate owners, will in all cases be the person or persons by whom or in whose name or names the legal estate will be conveyed and will be the only conveying party or parties except, where there exist concurrent estates in the same property and the subject estate is intended to be merged, as, for instance, where a mortgagee whose mortgage debt is wholly or partially discharged out of the purchase money joins for the purpose of surrendering his estate.

Consenting and other parties.

As to the persons to be joined for the purpose of consenting to a conveyance in execution of a trust for sale, see *post*, p. 573; and as to the concurrence of the trustees of the settlement for the purpose of giving a receipt for the purchase money on sale by a tenant for life, see *post*, pp. 589, 596.

Grantee.

As regards the joinder in the conveyance of persons intended to benefit thereunder it is provided by s. 56 of the L. P. Act, 1925, extending the repealed s. 5 of the R. P. Act, 1845, that a person may take an immediate or other interest in land or other property or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property although he may not be named as a party to the conveyance. The repealed section extended only to an immediate estate or interest in any tenements or hereditaments, and to the benefit of any condition or covenant respecting any tenements or hereditaments: see *Dyson* v. *Forster*, [1909] A. C. 98. Section 56 of the Act of 1925, does not, nor did the repealed section of the Act of 1845, extend so as to confer any right *in personam* upon a person not made a party to the deed: see *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.*, [1915] A. C. 847, 853.

Recitals—equities not to be recited.

As the result of the overreaching powers given to estate owners who hold as tenants for life, in trust for sale, or as personal representatives, the recital of equitable interests will almost invariably be omitted, although some reference to the nature of the former holding may in some cases be desirable. The case of a conveyance by two trustees to one of themselves on purchase

by the latter from the beneficiaries interested in the proceeds of sale, is exceptional. Here the equitable title must be recited in order that the conveyance may not on the face of it appear liable to be set aside under L. P. Act, 1925, s. 72 (4).

Reservations.

The Statute of Uses, and s. 62, of the C. Act of 1881, are repealed : (s. 207). A new expedient for the reservation of legal easements and other estates which under the former practice were reserved by declaration of use is accordingly furnished by s. 65 of the Act, which provides that a reservation of a legal estate shall operate at law without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made or any re-grant by him so as to create the legal estate reserved and so as to vest the same in possession in the person, whether being the grantor or not, for whose benefit the reservation is made ; and the same section, sub-s. 2, provides that a conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance shall operate as a reservation unless a contrary intention appears. This last sub-section disposes of any question of merger where an estate owner in fee simple subject to a lease takes a surrender of the lease and afterwards conveys subject to the lease.

Words of limitation.

By s. 60 of the Act it is provided that a conveyance of freehold land to any person without words of limitation or any equivalent expression shall pass to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance. This section, the marginal note to which is " Abolition of technicalities in regard to conveyances and deeds," appears to invite the practice of omitting the habendum from a deed of grant of freehold land in simple cases, or at any rate of omitting words of limitation or their statutory equivalent (see sub-s. 4) such as it has heretofore been the practice to insert in the habendum of such a grant. It is submitted that the effect of the section, if words of limitation were not inserted in the grant, would be to render nugatory the statutory implied covenants which may now be incorporated pursuant to s. 76 of the Act. The statutory covenant implied in a conveyance for valuable consideration, other than a mortgage, by the grantor conveying and being expressed to convey " as beneficial owner " extends to the subject-matter expressed to be conveyed, " subject as, if so expressed, and in the manner in which the conveyance is expressed to be conveyed." The subject-matter expressed to be conveyed by a grant of land without words of limitation would be the fee simple or " other the whole interest which the grantor had power to convey in the land ; " in other words, such interest as the grantor actually had in the land. A covenant thus limited appears to be of no value whatever : see *May* v. *Platt*, [1900] 1 Ch. 616, 619. It will be observed that the words " in fee simple " are inserted in the form of conveyance given in the Fifth Schedule to the Act, and in spite of the section under consideration the careful practitioner will no doubt continue to insert them.

Implied covenants on sale of leaseholds or land subject to a rentcharge.

Sections 77 and 190 of the Act supply, in the circumstances and to the extent therein mentioned, the covenants for payment and indemnity and the powers of entry and distress usually inserted in conveyances on sale of land subject to rentcharges and on the sale of leaseholds. These sections are discussed in reference to the sale of land subject to rentcharges, *ante*, pp. 379, 380.

In a conveyance on sale of all the land in a lease, covenants for payment of the rent by the assignee and for the observance and performance by him

of the covenants and conditions on the part of the lessee to be observed and performed and for indemnity are, by virtue of s. 77 (1) C, and without the use of any specially prescribed adoptive words, implied in the terms set out in Part IX, of the second schedule to the Act.

Where part only of the land comprised in a lease is sold and is conveyed subject to an apportioned rent whether then previously apportioned or apportioned by the conveyance (but in either case without the consent of the lessor), similar covenants by the assignee, confined, in this case, to the apportioned rent payable by him and to the covenants of the lease so far as relating to the land conveyed, are by virtue of paragraph D. of the same sub-section similarly implied. If the rent is expressed to be apportioned in the conveyance itself, the usual cross powers of entry and distress and perception of profits as set out in s. 190 (4) will, if and so far as the contrary intention is not expressed in the conveyance, be implied by that section. Covenants for payment by the assignor of the apportioned rent payable by him and for observance and performance by him of the covenants of the lease so far as they relate to the land retained by him will be implied in the terms set out in paragraph 2 of Part X. of the second schedule to the Act, if he conveys or is expressed to convey as beneficial owner (s. 77 (1) D. (ii)); or may be implied by express reference to the section (sub-s. 4), if he conveys or is expressed to convey as trustee, mortgagee, personal representative of a deceased person, committee of a lunatic, receiver of a defective, or under an order of the court.

Where part of the land comprised in a lease is sold but is expressed to be conveyed (a) subject to or charged with the entire rent, or (b) discharged or exonerated from the entire rent, provision is made by s. 77 (2) by reference to the provisions of sub-s. 1, for the implication of the appropriate covenants on the part of the assignee or assignor as the case may be; and if the rent is expressed in the conveyance to be charged exclusively on the land conveyed or any part thereof in exoneration of the land retained, in the one case, or is expressed to be charged exclusively on the land retained or any part thereof in exoneration of the land conveyed, in the other case, the like powers of entry and distress on default are implied by virtue of s. 190 in favour of the assignor or the assignee whose land is discharged from the rent as he would have had under that section if the rent had been apportioned and default had been made in payment of the apportioned rent.

The benefit of any covenant implied by s. 77, is by sub-s. 5, annexed to the estate or interest of the implied covenantee and can be enforced by every person in whom that estate or interest is for the whole or any part thereof from time to time vested. In other words it will run with the land of the implied covenantee in like manner as a covenant for title will run.

If there is more than one covenantor the implied covenants will be joint and several with the covenantees, if more than one, jointly and severally.

The powers of entry and distress conferred by s. 190 are conferred upon the lessee for the time being of any land comprised in the lease other than that in respect of which default has been made, and are therefore annexed to the land intended to be protected. It is expressly provided (sub-s. 8) that these powers are not affected by the rule relating to perpetuities.

The above are some of the principal points to which attention should be directed in drafting a conveyance. Other points will be considered as they arise in connection with the forms and precedents following.

RECITALS (*a*).

Assurances, &c.

Conveyance of freeholds by grant (general in form).

1. Whas by a conveyce, dated, &c., & made betn, *pties*, the ppty hby assured (*b*) [togr with other ppty] was grted to the

(*a*) See 1 Dav. Prec., 4th ed., 44; Elph. Introd., 7th ed., 70; Norton on Deeds, 181 *et seq.* References to a deed previously recited in an instrument are commonly made in the form "The hrinbfe recited deed [*or* "conveyance," *or* "mortgage," *or* "settlement," or otherwise, as as the case may be]. Under s. 57 of the L. P. Act, 1925, any deed whether or not being an indenture may be described (at the commencement thereof or otherwise) as a deed simply or as a conveyance deed of exchange, vesting deed, trust instrument, settlement, mortgage, charge, transfer of mortgage appointment lease or otherwise according to the nature of the transaction. For other forms of recitals specially adapted to mortgages and settlements, see those headings. In framing recitals the possibility of their hereafter becoming useful as evidence in support of the title should often be considered: see as to this the L. P. Act, 1925, s. 45 (6); *Bolton* v. *London School Board*, 7 Ch. D. 766 (not followed, *Re Wallis & Grout*, [1906] 2 Ch. 206); *Re Marsh & Earl Granville*, 24 Ch. D. 11. As to estoppel by recital see *Clarke* v. *Hall*, 24 L. R. Ir. 316; Norton on Deeds, 194; Elph. Introd., 7th ed., 70; and as to the effect of erroneous recitals upon the title of the grantee, see *Trinidad Asphalte Co.* v. *Coryat*, [1896] A. C. 587. As to estoppel by representation, see *Gresham Life Assce. Society* v. *Crowther*, [1914] 2 Ch. 219 and cases there cited.

Mode of reference to subject-matter of conveyance.

(*b*) The word "assured" is used here and elsewhere instead of "grted," &c., as being of general import, and applicable to any conveyance, whether by grant, assignment, appointment, bargain and sale, or otherwise. The short form "hby assured," is also generally used instead of the older forms "hrinar expressed to be hby assured," or "hrinar described & intd to be hby assured;" but the latter forms are often used in practice. Where several sets of parcels derived under different titles are to be conveyed by the same deed, they may be described in the parcels as "First, All that, &c., & Secondly, All that, &c." and referred to as "the ppty first *or*, 'secondly' hrinar assured."

As to use of the word "convey."

By means of the provision in the C. Act, 1881, s. 49, now replaced by the L. P. Act, 1925, s. 51 (2), that the word "grant" is not necessary in a conveyance of hereditaments (which, however, is merely a declaration of the previous law), and by the use of the word "convey" in the orms in the fourth schedule to the Act of 1881, and fifth schedule to the Act of 1925, coupled with section 57 of the former, and s. 206 of the latter Act (declaring that those forms and deeds using expressions to the like effect shall be "sufficient"), the latter word has acquired an appropriateness as a term of art which it did not previously possess; and it may properly be used, if preferred, instead of "grt," or "assn" in a conveyance of any kind of property.

use of, &c. *or since* 1925 to & [subject, &c., *state any incumbrances subject to which the ppty was conveyed.*]

The same (particular in form). As to recitals. Variation for sub-recitals.

2. WHAS by a conveyce, dated, &c., & made, &c., [after recitg (among other things) that, *or*, " to the effect that," *or*, " after recitals whby it appeared that," &c., it is by the deed now in recital witnessed that] in conson of the sum of £—— pd by the sd B. to the sd A., *or*, " for the conson thrin mentd," the sd A. grted unto the sd B., his hrs & assns [*or* in fee simple] the ppty hby assured [togr with other ppty] to hold the same unto & to the use of the sd B., his hrs & assns [*or in case of a conveyance made after* 1925, " unto the sd B. in fee simple "].

Conveyance to uses to bar dower (general in form).

3. WHAS by a conveyce, dated, &c., & made, &c., the ppty hby assured was assured to such uses & in such mner as the sd B. shd by deed appt, & in default of such apptmt to the use of the sd B. & his assns durg his life, with remr to the use of the sd C. & his hrs *or*, " exs & ads " durg the life of the sd B., In trust for the sd B. & his assns, with remr to the use of the sd B., his hrs & assns.

Lease and release, and fine, or recovery (general in form).

4. WHAS by a release, dated, &c., grounded on a lease for a yr, & made betn, &c., & by a fine levied by the sd —— to the sd —— in or as of —— term in the —— yr of the reign of His Majesty, &c., & by a declaron of the uses of the sd fine contd in the sd release *or*, " by a common recovery duly suffered in psuance of the sd release in the Court of Common Pleas in —— term in the sd yr " the ppty hby assured was assured to the use of, &c.

Lease and release, and appointment.

5. WHAS by a deed of apptmt & release, dated, &c., grounded so far as the same operated as a release on a lease for a yr, & made, &c., *if the recital is parlar in form*, " the sd A. appted that the ppty hby assured shd henceforth go & remain to the uses thrinafter declared concerng the same, & by the deed now in recital the sd A. released unto the sd B. & his hrs the sd ppty & premes, to hold the same unto the sd B. & his hrs, to the use, &c.," *if general in form*, " the ppty hby assured was assured to the uses, &c."

Lease and release, and assignment.

6. WHAS by a deed of release & assnmt, dated, &c., grounded, so far as the same operated as a rele, on a lease for a yr, & made, &c., the ppty hby grted was assured to the use, &c., & the ppty hby assned, was assned, &c.

Statutory release.

7. WHAS by a deed of staty release, dated, &c., & made, &c., the ppty, &c., was assured, &c.

8. Whas by a deed of bargain & sale duly enrolled psuant to the statute in that behalf, dated, &c., & made, &c. Bargain and sale enrolled.

9. Whas by a deed, dated, &c., & made, &c., for the conson thrin mentd, the sd A. covted with the sd B. to surr the ppty hby assured to the use of, &c. Covenant to surrender copyholds.

10. Whas [at a court holden for the manor of —— in the county of ——], on the —— day of ——, the ppty hby assured was [psuant to the afsd covt in that behalf] surrendered by the sd A. [out of court] into the hands of the lord of the sd manor of ——, to the use of the sd B., his hrs & assns, at the will of the lord, accordg to the custom of the sd manor. Surrender of copyholds.

11. Whas [at a court holden for the manor of —— in the county of ——], on the —— day of ——, the sd A. was [out of court] admitted tenant to the property hby assured to hold unto the sd A., his hrs & assns, at the will of the lord, accordg to the custom of the sd manor of ——. Admittance to copyholds.

12. Whas the sd premes formerly copyhds were on the —— day of —— duly surrendered to the use of the sd A., his hrs & assns [psuant to the afsd covt in that behalf], & the sd A. was on the same day duly admitted thereto. Surrender and admittance (short form).

13. Whas under or by virtue of a deed, dated, &c., & made, &c., *or as the case may be,* the ppty hby, &c. [was assured to] *or* " became vested in " the sd A. for an este of inheritance in fee simple, *or* " became vested in the sd A. as este owner in respt of the fee simple throf." General recital of any assurance.

14. Whas by a deed dated, &c., & made, &c., [in conson of the sum of £—— pd by the sd B. & C. to the sd A.] the ppty hby assured, &c., *recite conveyance subject to redmon as in f.* **17** *saying in the case of several mortgagees,* " Upon paymt to the sd B. & C. or the survor of them or the exs or ads of such survor their or his exs, &c." [And it was thereby declared that the sd sum of £—— so pd by the sd B. & C. as afsd was moy belongg, &c., *recite joint account clause*] And by the deed now in recital power was given to the sd B. [& C. or the survor of them, their or] his exs, ads, or assns at any time or times after a day now past to sell the mtged ppty in the mner & on the happening of one of the events thrin mentd & to give a receipt for the pchase-moy & it was thereby declared Mortgage in fee of freeholds made before 1882. Variations for a mortgage to several (*a*).

(*a*) In a conveyance on sale it is not usually necessary to recite the covenant for payment, or anything more than the conveyance subject to redemption, unless an express power of sale is to be exercised in which case it must be recited.

&c., recite purchaser's protection clause. Add recital of effect of Law of Property Act, 1925, as in form **17**, *infra.*

Mortgage of freeholds by demise made after 1925.

15. Whas by a mtge dated, &c., & made, &c. [in conson of the sum of £—— pd by the sd B. & C. to the sd A.] the ppty hby assured was [togr with other ppty] demised by the sd A. to the sd B. [& C.] for the term of [three thousand] yrs subject to a proviso for cesser upon paymt to the sd B. [& C.] of the sum of £—— with intt for the same on a day now past *or* by way of mtge for securg the paymt to the sd B. [& C.] of the sum of £—— with intt thron as thrin expressed.

Mortgage by charge by way of legal mortgage.

16. Whas by a deed expressed to be a charge by way of legal mtge, date of, &c., & made, &c., the ppty hby assured was [togr with other ppty] charged with paymt to the sd B. [& C.] of the sum of £—— with intt thron as thrin expressed.

Mortgage in fee of freeholds made after 1881 and before 1926. Variations for a mortgage to several (*b*).

17. Whas by a deed dated, &c., & made, &c., [in conson of the sum of £—— pd by the sd B. & C. out of moys belongg to them on a joint account to the sd A.] the [freehold] ppty hby assured was [together with other ppty] assured by the sd A. unto & to the use of the sd B. [& C.] his [their] hrs & assns subjt to a proviso for the redmon throf upon paymt to the sd B. [& C.] his [their] exs, ads, or assns of the sum of £—— with intt for the same on a day now past *or* " by way of mtge for securing the paymt to the sd B. [& C.] his [their] exs, ads, or assns of the sum of £—— [belongg to them on a joint acct] with intt thron, as thrin expressed." And whas by virtue of the transitional provisions of the Law of Property Act, 1925, all the same ppty has become vested in the sd A. as este owner in respect of the fee simple throf but subjt to a term of 3000 yrs wch by virtue of the sd Act became vested in the sd B. [& C.] subjt to a proviso for cesser on paymt of the sd ppal sum of £—— & intt as afsd.

Mortgage of leaseholds by sub-demise (*c*).

18. Whas by a mtge, dated, &c., & made, &c., the premes comprised in the recited lease were demised by the sd A. unto the sd B., for the residue of the sd term of —— yrs grted by

(*b*) See note (*a*) on previous page.

(*c*) For variations for several leases, see note (*d*), p. 446 Where the mortgage is by sub-demise and the term granted by the original lease is defined as the "head term," say, " for the residue of the head term except the last day throf (hrinar referred to as the mtge term) " ; and subsequently, "the reversion thereby reserved of the head term in the same premes."

the sd lease except the last day throf subjt to a proviso for the redmon throf on paymt to the sd B., of the sum of £—— with intt thron on a day now past, *or*, " by way of mtge for securg, &c.," *see last form*] : [And the sd A. thereby declared himself a tree of the reversion thereby reserved of the sd term of yrs in the same premes (*a*) for the sd B., his exs, ads, & assns subjt to such equity as might for the time being be subsistg by virtue of the proviso for redmon thrinbfe contd] (*b*).

Mortgage of leaseholds by assignment made before 1926.

19. Whas by a mtge, dated &c., & made, &c., the premes comprised in the recited lease were assned by the sd A. unto the sd B. for the residue of the sd term of —— yrs granted by the sd lease subjt to a provo for the redempon throf on paymt to the sd B. of the sum of £—— with intt thron on a day now past *or* by way of mtge for securg, &c., *see form* **17**. And whas by virtue of the transitional provons of the Law of Property Act, 1925, all the sd premes have become vested in the sd A. as este owner in respect of the sd term of —— yrs granted by the sd lease, but subjt to a derivative term for all the residue of the sd term so granted except the last 10 days throf, wh derivative term was by virtue of the sd Act vested in the sd B. subjt to a provon for cesser on paymt of the sd ppal sum of £—— & intt as afsd.

Mortgage of copyholds by way of covenant to surrender.

20. Whas by an indre dated, &c., & made, &c., the ppty hby assured was covted to be surrendered by the sd A. to the use of the sd B., his hrs & assns, subjt to a condon for makg void the same surr on paymt to the sd B., his exs, ads, or assns, of the sum of £—— with intt thron in the meantime at the rate & on a day now past, *or*, " by way of mtge for securg, &c.," *as in f.* **17** : [And power was thereby given, &c., *as in* f. **14**.] And whas by virtue of the transitional provons of the L. P. Act, 1922, the mtge created by the sd indre became on the 1st day of January, 1926, a mtge for a term of 3000 yrs subjt to a proviso for cesser corresponding to the right of redemption subsistg under the sd mtge.

Conditional surrender of copyholds by way of mortgage.

21. Whas on the —— day of ——, in conson, &c., the sd copyhd ppty was duly surrendered by the sd A. to the use of the sd B., his hrs & assns, subjt to a condon, *as in last form or*, " subjt to a condon for makg void such surr psuant to the

(*a*) See *ante*, p. 444, note (*c*).

(*b*) See f. 14 and note the variations in that form and in f. 17 for a mortgage to several.

hrinbfe recited mtge" *continue as in last form, substitutg,* created by the sd surr *for* created by the sd indre.

Mortgage of freeholds and leaseholds made before 1926.

22. WHAS by a mtge, dated, &c., & made, &c., the freehd ppty described in the first part of the schdle hto was [with other ppty] assured by the sd A. unto & to the use of the sd B. (*c*), his hrs & assns, *or* "in fee simple" & the premes comprised in the (*d*) recited lease, were demised by the sd A. unto the sd B. for the residue of the sd term of yrs grted by the sd lease except the last day throf, subjt as to all the sd freehd & leasehd premes to a proviso for the redmon throf on paymt to the sd B., of the sum of £——, with intt thron at the rate thrin mentd, on a day now past, *or* "by way of mtge for securg the paymt to the sd B. of the sum of £—— with intt thron at the rate thrin mentd." And by the same indre, the sd A. covted with the sd B. to surr the ppty (then copyhd of the manor of ——) described in the second part of the schdle hto [togr with other copyhd ppty] to the use of the sd B., his hrs & assns, accordg to the custom of the sd manor, subjt to a condon for making void the same surr correspondg with the proviso for redmon thrinbfe contd as afsd: [*Recite any other material clauses, such as the power of sale, &c., see above, & add statement of effect of transitional provons of L. P. Act as in* ff. **17**, **19**, **20** (*e*).

Statutory mortgage of freeholds or leaseholds (*f*).

23. WHAS by a legal charge made by way of statutory mtge dated, &c., & made, &c., the ppty hby assured was charged by the sd A. by way of legal mtge with paymt to the sd B. of the ppal sum of £——, with intt thron at the rate thrin mentd [& on a day now past].

Mortgage of life interest.

24. WHAS by a mtge dated, &c., the sd K. *mtgor* [in conson of the sum of £—— pd to him by the sd A., B., & D. (*g*).] conveyed [bargained, sold & demised] his este for life under the will of Y., deced, in the ppty specified in the first & second pts of the first schdle hto, the freehd & inheritance whrof was

(*c*) For a mortgage to several, say, here and subsequently, "B. C. & D., their, &c."

(*d*) For several leases, say, "respective hrinbfe recited leases," and subsequently, "were assned [demised] &c., for the respective residues of the sd several terms of yrs granted resply, &c."

(*e*) Note the variations for a mortgage to several in ff. 14 and 17.

(*f*) See L. P. Act, 1925, s. 117, and 4th schedule.

(*g*) If the mortgage was before 1882 insert the words in this bracket and recite the joint account clause and power of sale, &c., as in f. 14, p. 443. The power of sale given by Lord Cranworth's Act does not apply to pure personalty.

then subjt to the annuity, mtges & charges specified in the first & second pts of the second schdle hto, to the sd A., B., & D. [for the term of ninety-nine yrs (*h*) from the day next bfe the date of the indre now in recital, if the sd K. shd so long live] & assned his life intt in the annual income of the ppty subjt to the trusts of a settlemt, dated, &c., & specified in the third schdle hto, & also the sevl pols of assurce on the life of the sd K., the parlars whrof are specified in the fourth schdle hto, to the sd A., B., & D., by way of mtge, to secure the repaymt to the sd A., B., & D. [or the survors or survor of them, or the exs or ads of such survor, their or his assns (*a*)], of the sum of £——, belongg to them on a joint acct (*b*), togr with intt thron at the rate & on the day thrin mentd.

Mortgage of reversionary personalty.

25. Whas by a mtge, dated, &c., & made, &c., the —— share, & all other (if any), the share & intt to wch the sd A. was entitled in reversion or expectancy under the sd will of the sd X. or orwise, in his residy este, or the trust funds & ppty representg the same, *or, as the case may be,* was [togr with other ppty], assned by the sd A. to the sd B., by way of mtge, for securg the sum of £—— & intt.

Further charge.

26. Whas by a deed of further charge, dated, &c., in conson of, &c., the sd A. charged the sd ppty comprised in the sd mtge [*or* legal charge] of the —— day of —— with the paymt to the sd B., of the further sum of £—— with intt thron as thrin mentd.

Transfer of mortgage of freeholds and leaseholds before 1925.

27. Whas by a deed of transfer, dated, &c. [after recitals whereby it appeared that there was then due from the sd A. to the sd B. upon the secy of the sd mtge [& further charge], the ppal sum of £—— with some intt thron (*c*), it is by the deed now in recital witnessed that] in conson, &c., the sd B. [at the request of the sd A., *mtgor*] assned the sd sum of £—— & the

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(*h*) The life interest of the mortgagor or the term of 99 years determinable on his death, as the case may be, will continue to subsist under L. P. Act, 1925, s. 4, as an equitable interest, and may be dealt with as such by the mortgagee under his power of sale.

(*a*) See note (*g*), *supra*, p. 446.

(*b*) In the case mentioned in note (*g*), *supra*, p. 446, the words "belonging to them on a joint acct" will of course be omitted.

(*c*) *Or* "and that all intt on the same had been pd up to the date of the deed now in recital," and omit the words "due &" in the assignment of the interest.

intt [due &] to become due for the same, unto the sd C., & by the same indre the sd B. [at the like reqt of the sd A.] grtd [& the sd A. confirmed] the sd premes comprised in the sd mtge, with the appurts, unto & to the use of the sd C. in fee simple, subjt to such equity of redmon as the same premes were then subjt to by virtue of the sd mtge [& further charge]. *Similar recital, mutatis mutandis, of assnmt of leasehds.*

The same (short form).

28. WHAS by a deed of transfer, dated, &c., the sum of £——, being the ppal sum then owing as thrin recited under the sd mtge of, &c., & the intt due & to become due for the same, & the sd respective freehd & leasehd premes comprised in the sd mtge were resply assned, assured, & transferred by the sd B. [with the concurrce of the sd A., *mtgor*], to the sd C., his hrs, exs, ads, & assns resply, subjt as to all the sd premes to the equity of redmon subsistg thrin.

Transfer of mortgage after 1925 (*d*).

29. WHAS by deed of transfer of mtge dated, &c., & made, &c., the sd A. conveyed & transferred to the sd B. the benefit of the sd mtge [*or* legal charge] [and further charge].

Statutory transfer of mortgage (*e*).

30. WHAS by a transfer of mtge made by way of statutory transfer, dated, &c., & made, &c., the sd A. conveyed & transferred to the sd B. the benefit of the sd legal charge.

Statutory transfer and mortgage combined (*d*).

31. WHAS by a transfer of mtge & legal charge made by way of statutory transfer & mtge, dated, &c., & made, &c., after recitals whereby it appeared, &c., in conson of, &c., the sd A. conveyed & transferred to the sd C. the benefit of the sd legal charge, & by the same deed the sd B. charged by way of legal mortgage the ppty hby assured with the paymt to the sd C. of the sum of £——, with intt thron as thrin mentd.

Devolution of title to mortgage (short form).

32. WHAS by virtue of divers mesne assurces, acts in the law, & events, & ultimately by a deed of transfer of mtge dated, &c., & made, &c., the ppal sum owing on the secy of the sd

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(*d*) See L. P. Act, 1925, s. 114 (3).

(*e*) See L. P. Act, 1925, ss. 117–119, and 4th schedule. Where a mortgage has been originally made in the statutory form, there is no reason why a transfer of it should be in a statutory form, since the words of s. 118 of the L. P. Act, 1925 are not compulsory. There is no statutory form for a sub-mortgage. A statutory transfer of a mortgage made in the ordinary form would not, if executed before 1926, have passed the legal estate: *Re Beachey*, [1904] 1 Ch. 67; now, however, the statutory form of transfer complies with the permitted form of transfer of an ordinary mortgage (see L. P. Act, 1925, s. 114) and consequently a statutory transfer executed after 1925 of a mortgage not in the statutory form would be effectual to pass the mortgage term (if any) subsisting at the date of transfer.

mtge with the intt thron has become vested in the sd A., & the ppty comprised in the sd mtge [except certain pts throf wch were in the yr —— sold & conveyed to the pchaser] has become vested in the sd A., for the unexpired residue of the sd term of —— yrs *or* "the term of —— yrs by statute created therein" subjt to the rt of redmon subsistg thrin on paymt of the sd mtge debt & intt: AND WHAS there is now due on the secy of the sd mtge the ppal sum of £—— [& no more], with the sum of £—— for intt thron.

Devolution of title to charge by way of legal mortgage.

33. WHAS by virtue, &c., & ultimately, &c., *as in preceding form,* the ppal sum owing on the secy of the sd charge by way of legal mtge with the intt thron together with the benefit of the sd charge have become vested in the sd A.: AND WHAS there is now due, &c.

Vesting deed of settlement made before 1926 (*f*).

34. WHAS by a ppal vesting deed dated, &c. & made pursuant to section 37 of the Settled Land Act, 1925, between, &c., it was declared that the freehd [leasehd] ppty hby assured wch with other ppty was comprised in the settlmt thrin referred to of the —— settled estes was vested in the sd A. in fee simple [for all the residue then unexpired of the sd term of —— yrs] upon the trusts & subjt to the pwrs & provons upon & subjt to wch under the sd settlmt or orwise the same ought from time to time thncefrwd to be held & it was also declared that the trees [sd B. & C.] were the trees of the sd settlmt for all the pposes of the sd Act [& that the pwr to appnt a new tree or new trees of the sd settlmt was vested in the sd A. during his life].

Vesting deed of settlement made after 1925 (*g*).

35. WHAS by a ppal vesting deed [hrinar called the ppal deed] dated, &c., & made, &c., it was declared that certain freehd ppty [including the ppty hby assured] was vested in the sd A. in fee simple (*h*) upon the trusts declared concerng the same by a trust instmt bearing even date with the deed now in recital & by the sd deed it was also declared that the trees were the trees of the settlmt for all the purposes of the Settled Land Act, 1925.

(*f*) See S. L. Act, 1925, 2nd schedule.

(*g*) Under the S. L. Act, 1925, s. 4, every settlement of a legal estate *inter vivos* must be effected by two deeds, namely, a vesting deed and a trust instrument.

(*h*) For leaseholds say "that the premes comprised in the sd lease were vested in the sd A. for all the residue of the sd term of —— yrs," etc.

The same for insertion in subsidiary vesting deed.

36. WHAS by a ppal vesting deed (hrinar called the ppal deed) dated, &c., & made, &c., certain ppty was vested in the pchaser upon the trusts of a trust instrumt of even date thrwth, & by [endrsemts on] the ppal deed the trees were stated to be the trees of the settlmt effected by the ppal deed & the sd trust instrumt for the ppses of the Settled Land Act, 1925.

Subsidiary vesting deed when land is purchased with capital money (*a*).

37. WHAS by a subsidiary vesting deed dated, &c., & made, &c., the ppty hby assured was [with other ppty] conveyed to the sd A. in fee simple upon & subjt to the same trusts & pwrs as were declared by the ppal deed by refce to the sd trust instrmt afsd with respect to the ppty comprised in the ppal deed. And it was thby decld that the trees were the trees of the settlmt subsistg under or by virtue of the sd subsidiary vesting deed & the sd trust instrumt [& that the power to appt a new tree or new trees of the sd settlmt was vested in the sd A. durg his life].

Deed of declaration as to new trustees (*b*).

38. WHAS by a deed dated, &c., & made psuant to section 35 of the Settled Land Act, 1925, betwn, &c., & suppl to the ppal deed it was declared that the trees were the trees of the sd settlmt for all the purposes of the sd Act.

Deed of discharge on termination of settlement.

39. WHAS by a deed of discharge, dated, &c., & made, & the sd A. & B., *trustees of the settlement as declared by the last or only principal vesting instrument* declared that they were discharged from the trust declared by the settlmt *or* "trust instrumt" referred to in the sd vesting instrumt so far as regards the lands hby assured (*c*).

Conveyance in trust for sale.

40. WHAS by a convce, dated, &c. [in conson of the marre shortly afterwards solemnised betn the sd A. & B.] certain ppty situate in the county of, &c. (wch comprises the ppty hby assured) was conveyed unto the sd K. & L., in fee simple, & the ppty comprised in the recited indre of lease was assned to the sd K. & L. for the residue of the sd term of —— yrs subjt to the paymt of the rent & the pformce & observce of the covts by the

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(*a*) See S. L. Act, ss. 10, 31, and Form No. 4 in the First Schedule of that Act.

(*b*) See S. L. Act, 1925, ss. 35 and 110 (2) (*d*). Where there were no trustees for the purposes of the Settled Land Act, 1925, at the commencement of the Act, new trustees must have been appointed in order to comply with transitional provisions of s. 37. As to trustees of compound settlements, see S. L. Act, 1925, s. 31.

(*c*) See S. L. Act, 1925, s. 17 (3), providing that where a deed or order of discharge contains no statement to the contrary, a purchaser of a legal estate in the land to which the deed or order relates is entitled to assume that the land has ceased to be settled land or subject to any trust for sale.

lessee & condons resply reserved by & contd in the sd lease, & as to both the sd freehd & leasehd ppties upon trust [after the intd marre] for sale with the consent of the sd A. & B., or the survor of them, durg their, his, or her life [& afterwards at the discron of the trees or tree for the time being of the same deed].

The same, where land purchased under power in personalty settlement (*a*).

41. Whas by a convce, dated, &c., & made, &c., the ppty hby assured was conveyed to the sd B. & C., in fee simple, upon the trusts by a settlemt of, &c., *or* "the will, &c.," declared concerng the ppty to be pchased under a power thrin contd, being (among other trusts) for the sale of the sd ppty by the sd trees with the consent of, &c.

Lease.

42. Whas by a lease, dated, &c., & made, &c., *Parcels in full, from lease* (*b*), with the appurts throf were demised [by the sd A.] to the sd B., from the —— day of ——, for the term of —— yrs, at the yrly rent of £—— & under & subjt to *or* "subjt to the paymt of the rent thereby reserved, &" the covts on the pt of the lessee & condons thrin contd [including a covt by the lessee not to assn, &c., *from lease* witht the previous consent in writing of the lessor, his hrs or "exs, ads," or assns (*c*)].

(*a*) Land purchased by trustees under a power to invest in the purchase of land contained in a personal settlement coming into operation after 1911, is held by them upon trust for sale with power to postpone the sale unless the settlement otherwise provides: L. P. Act, 1925, s. 32. The trusts hitherto usually inserted in personalty settlements in reference to land so purchased will therefore, for the future, be omitted. The conveyance will be in the form, *post*, p. 503, f. 13; and the recital will run accordingly, "upon the trusts upon wch ppty pchased under a power in that behalf contd in a settlemt of, &c., *or* "the will, &c.," ought to be held being (among other trusts) for the sale by the sd trees of the sd ppty."

In cases prior to the Act of land purchased under a power in a settlement authorising investment in land, but declaring no trusts of the land purchased, the trustees have a power of sale only with the consent of the tenant for life: *Re Pope*, [1911] 2 Ch. 442.

Parcels in recital of lease.

(*b*) For brevity the parcels may be described as "the messe, land, & ppty, *or as the case may be*, thrin parlarly described, situate, &c., & wch are now known as, &c." If the lease contains reservations, add after the parcels, "subjt to the reservons or exceptions thrin contd." In an assignment of part only of the premises in the lease, the parcels assigned will be set out in the operative part, and the parcels will be described in the recital of the lease as "the [piece of land, messe, &] ppty hrinar parlarly described & assned (togr with other ppty)," and the amount of the rent should be stated.

(*c*) See the variations to an assignment of leaseholds where the consent of the landlord is necessary, *post*, p. 533.

Mining lease.

43. Whas by a lease, dated, &c., & made, &c., all those mines, seams, measures, or strata of coal, known as ——, & also all those mines, beds, or strata of ironstone known as ——, lying & being under all those lands, &c., togr with such liberties, licences, & authorities for workg or gettg the sd mines & minerals or incidental thereto, as are in the sd lease expressed, subjt to such reservons & exceptions as are thrin mentd, were demised & grted [by the sd A.] to the sd B., for the term of —— yrs from the —— day of ——, subjt to the paymt or renderg of the surface & other rents & royalties thereby reserved & made payable, & the covts on the pt of the lessee & condons thrin contd.

Several leases referring to schedule.

44. Whas by the four sevl leases the dates & pties whrof are stated in the first & second columns of the schdle hto, the sevl messes or tenemts & ppty wch are shortly described in the third column of such schdle, were demised to the sd B., for the respective terms & at the respective yrly rents mentd in the fourth & fifth columns throf, & subjt to the covts on the pt of the lessee & the condons contd in such respective leases.

Assignment of lease.

45. Whas by an assnmt, dated, &c., & made, &c., the premes comprised in the sd lease with the appurts throf were assned by the sd A. to the sd B., for the residue of the sd term of —— yrs grted by the sd lease, subjt to the rent reserved by & the covts on the pt of the lessee & condons contd in the sd lease. [*For two or more leases say,* Whas by an assnmt, dated, &c., & made, &c., the premes comprised in the sd respective indres of lease with the appurts throf were assned by the sd A. to the sd B., for the respective residues of the sevl terms of —— yrs & —— yrs, *or as the case may be,* grted by the sd leases resply, subjt to the rents reserved by & the covts on the pt of the lessee & condons contd in the sd respective leases.]

Variation for two or more leases.

Assignment of part of leaseholds at an apportioned rent.

46. Whas by an assnmt, dated, &c., & made, &c., the sd K. [who was then entitled to the premes demised by the sd lease for the residue then unexpired of the sd term of —— yrs] assned unto the sd A. the ppty hby assned, being pt of the ppty demised by the sd lease, to hold the same unto the sd A., for the residue of the sd term of —— yrs, subjt to the yrly rent of £—— (being an apportioned pt of the sd rent of £—— reserved by the sd lease) & to the covts by the lessee & condons thenceforth to be observed & pformed in respt of the premes thereby assned [& by the same assnmt the paymt by the sd K. & A. resply of

their respective portions of the sd rent of £——, & the observce & pformce by them resply of the covts & condons of the sd lease in respt of the premes vested in them, & their mutual indemnity in respt throf were secd by mutual covts in that behalf thereby entered into by the sd K. & A. resply & by mutual powers of entry & mutual charges thereby grted by them upon their respective portions of the premes (*a*)].

Devolution of title to lease.

47. Whas by virtue of divers mesne assurces, acts in the law, & events, & ultimately by a deed of assnmt, dated, &c., & made, &c., the premes comprised in the sd lease have become absolutely vested in the sd A. for all the residue of the sd term of —— yrs subjt to the rent reserved by & the covts & condons contd in the sd lease. [*For two or more leases say,* Whas by virtue of, &c., the premes comprised in the sd sevl leases have become absolutely vested in the sd A. for all the residue of the sd terms of —— yrs & —— yrs, *or as the case may be,* subjt to the rents reserved by & the covts & condons contd in the sd leases resply.]

Variation for two or more leases.

Devolution of title to part of property in a lease.

48. Whas by virtue of divers mesne assurces, &c., *as in preceding form,* the ppty hby assned has become vested in the sd A. for all the residue of the sd term of —— yrs. at the rent of £—— wch by the sd last mentd deed *or* " a deed dated, &c., & made, &c.," is made payable in respt of the ppty hby assned as the apportioned pt of the entire rent of £—— reserved by the sd lease subjt to & with the benefit of the covts & condons contd in the sd lease so far as they relate to the sd ppty & subjt to & with the benefit of the covts & condons contd in the sd last mentd deed *or* " deed of, &c.," as to the apportionmt of the sd entire rent of £—— or orwise (*a*).

Grant of rent-charge (*b*).

49. Whas by a deed, dated, &c., & made, &c., the ppty hby assured [described in the schdle hto] was limited to the use that the sd A., his hrs & assns shd take a perpetual rent of £—— to issue out of the sd ppty to commence from the —— day of —— & to be pd by eql half-yrly paymts on the —— day of —— &

(*a*) In an assignment for valuable consideration made after 1925 mutual covenants by assignor and assignee to the effect stated in the above recital will be implied & need not be inserted, see L. P. Act, 1925, s. 77 (1) (*d*), and Second Schedule, Part X. pars. (i) and (ii); and mutual powers of entry and distress and perception of profits will be implied by L. P. Act, 1925, s. 190, if in the assignment the entire rent was " expressed to be apportioned between the land conveyed or any part thereof and the land retained by the assignor or any part thereof. " See preliminary note to Conveyances on Sale, *ante*, p. 440.

(*b*) See L. P. Act, 1925, s. 121, and *ante*, p. 377, note (*a*).

the —— day of —— in every yr [*or* a perpetual rent of £—— issuing out of the ppty hby assured to commence, &c., was granted to the sd A. in fee simple] & the paymt throf in mner afsd was further secd by [express powers of distress & entry & by] the covt of the sd X.

Devolution of title to rent-charge (*a*).

50. Whas by divers mesne assces acts in the law & events & ultimately by a deed dated, &c., & made, &c., the sd rent has become vested in the sd A. as estate owner thereof togr with the benefit of the [sd] remedies applicable resply for recovering & compelling paymt of the same.

Deed poll.

51. Whas by a deed poll, [*or* an appointmt *or as the case may be*, dated, &c., under the hand & seal of the sd A., &c. [*if by a Co*, under the common seal of the sd Co & the hands of three of the dirors throf, &c.].

Bond.

52. Whas by a bond or obligon, dated, &c., under the hand & seal of the sd A., the sd A. became bound to the sd B. in the sum of £—— with a condon for makg void the same upon paymt, &c., *or*, "conditioned for the paymt, &c.," *or* "with a condon thrunder written whereby after recitg, &c., it was provd, that upon paymt, &c., the sd bond shl be void."

Variation where recitals are recited.

Appointment of new trustees (*c*).

53. Whas by a deed of apptmt dated, &c., & made, &c., & endorsed on [suppl to] the recited convce in trust for sale [in exse of a pwr for that ppose contd in the sd convce] the sd A. & B. resply were duly appted by the sd X. to be trees of the same convce in the place of the sd L. deced, & of the sd M. who retired from the treeship throf [& by the deed now in recital, or orwise, the trust este & premes wch were then subjt to the trusts of the sd convce were duly assured or transferred so as to vest in the sd A. & B. jointly with the sd C. *or*, "it was thereby declared by the sd X. that the trust este & premes, &c., shd vest, &c. (*d*)].

Deed of even date or dated

54. Whas by a deed bearg even date with, & exted bfe, *or*, "already prepared & engrossed & intd to bear even date

(*c*) As to the appointment of new trustees, see *ante*, pp. 119, 139. Where new trustees of a settlement have been appointed for the purposes of the Settled Land Act, 1925, it will be sufficient to recite the deed of declaration made pursuant to s. 35 of that Act. See S. L. Act, 1925, s. 110 (2) (*d*), and *ante*, p. 450, f. 38.

(*d*) As to the implication in deeds of appointment of new trustees made after 1925 of the usual vesting declaration, see T. Act, 1925, s. 40 and *ante*, p. 125.

with & to be exted immedly after," *or*, " bearg date the day next bfe the day of the date of," this deed, & made betn, *pties, or*, " the same pties as are pties hto," the sd ppty & premes have been, *or*, " are intd to be," conveyed, &c. the day before.

55. Whas by the award, dated, &c., of the Commrs appted under an Act of Parliament intituled, &c. *or* " the award of A. B. the valuer duly appted under the provons of the Inclosure Act, 1845, wch award was duly confirmed by the Minister of Agriculture & Fisheries *or as the case may be* (*a*) on the —— day ——" the pieces of land, allotmts, & ppty hby assured, were (togr with other ppty) allotted & awarded to the sd A. for or in respt of [or in exchange for] the sd copyhd ppty comprised in the hrinbfe recited surr of, &c. [or certain pts throf]. Award of Inclosure Commissioners.

56. Whas by an award of the [Copyhd Commrs *or as the case may be* (*a*)], dated, &c. [after recitg that the enfranchisemt of the sd ppty had been duly required accordg to the provons of the Copyhd Acts, & that A., the lord of the sd manor, had consented in writg to the enfranchisemt extendg to the rights reserved by the Copyhd Act, 1852 [Copyhd Act, 1894], & that the amt to be pd for such enfranchisemt had been ascertained under the provons of the Copyhd Act[s] [Act, 1894], to be the sum of £——, & that such sum had been duly pd under the direction of the [sd Commrs], & that all other acts required by the sd Acts previously to the confirmon of the award now in recital had been duly done & pformed :] the sd Commrs, in psuance of the powers vested in them by the Copyhd Acts [Act, 1894], enfranchised the sd ppty with Award of enfranchisement.

(*a*) Prior to the 8th August, 1845, inclosures were made under a local Inclosure Act together with the Inclosure (Consolidation) Act, 1801, by the award of Commissioners. From that date they were made by the award of a valuer appointed under the Inclosure Act, 1845, which required confirmation, if before 1883, by the Inclosure Commissioners for England & Wales. By the S. L. Act, 1882, s. 48, the Commissioners styled respectively "the Inclosure Commissioners for England & Wales," "The Copyhold Commissioners" and the "Tithe Commissioners for England & Wales," were consolidated into one body styled "The Land Commissioners for England"; and by the Board of Agriculture and Fisheries Acts, 1889 and 1903, the powers and duties of that body were transferred to the Board of Agriculture & Fisheries. By the Ministry of Agriculture & Fisheries Act, 1919, the Minister of Agriculture & Fisheries was substituted for the Board.

the appurts thrto belongg [& did also, by virtue of the consent afsd, enfranchise the same free from all the rights reserved by the Copyhd Act, 1852, *or*, " the Copyhd Act, 1894:"] To be holden as freehd thenceforth discharged from all incidents of copyhd or custy tenure.

Private Act of Parliament.

57. Whas by a private Act of Parliament, intituled, &c., (chapter ——), after recitg (among other things) that, &c., it was enacted, &c.

Wills, Probates, Administrations & Assents

Will containing devise in trust for sale where the trust became operative before 1926 (*a*).

1. Whas X., late of, &c., decd, being at the date of his death hrinar recited seised in fee simple in posson free from incumbces of the ppty hereby assured, duly made his will, dated, &c., & thereby after apptg the sd A. & B. to be exs & trees throf gave & devised to them his real & leasehold estes (includg the ppty hby assured) *or for a specific devise* " devised to them all the same ppty " upon trust for sale as therein mentd.

(*a*) The former practice of reciting the will survives in the case of a sale by trustees of land devised to them in trust for sale, where express or implied assent has been given to the devise before 1926 : see *post*, p. 574. In other cases the provisions of the L. P. Act, 1925, and the S. L. Act, 1925, combine with s. 36 of the Adm. of Estates Act, 1925, to render a recital of the will unnecessary. S. 36 of the last-mentioned Act plays an important part in the new scheme of conveyancing and must be carefully studied. Duly constituted personal representatives, whether acting as executors under a grant of probate or as administrators under a grant of letters of administration, have power, under this section, by means of an assent made in the prescribed manner (sub-s. 4), to vest in the proper person (whether claiming by devise, bequest, devolution, appropriation or otherwise) any estate or interest in real estate (which includes chattels real) to which the testator or intestate was entitled and which has devolved upon them as such duly constituted personal representatives (sub-s. 1 and 2) ; and, in favour of a purchaser, an assent to the vesting of a legal estate, unless notice of a previous assent or conveyance affecting the same has been placed on or annexed to the probate or administration, is to be taken as sufficient evidence that the person in whose favour it was made was the person entitled to have it conveyed to him, and that the trusts therein declared (if any) were the proper trusts (sub-s. 7). Where, therefore, the assent relates to a legal estate in land, the person in whose favour it is given becomes the estate owner in respect thereof, and, upon a subsequent sale will be in a position to make a title to the purchaser depending on the probate or letters of administration and the instrument of assent. The will operates in equity, and ceases, where s. 36 applies, to be material to the title.

2. And whas the sd testor by a codl to his sd will, dated, &c., apptd [the sd] K. to be an exor & tree of his sd will to act jointly with the sd A. & B. & declared that his sd will shd be construed & take effect, &c. Codicil appointing additional executor and trustee.

3. Whas the sd testor died on the —— day of —— witht havg revoked or altered his sd will, wch was duly proved by the exs thrin named [except the sd K.] on the —— day of ——, in the Ppal *or* "—— District" Probate Registry of the High Court of Justice (*b*) [the sd K. havg renounced probate throf, *or*, "the sd K. havg predeceased the sd testor," *or*, "the sd K. havg died on the —— day of —— witht havg taken out probate throf," *or*, "power being reserved to the sd K. to prove the same" (*c*)]. Death of testator and probate of recited will.

4. Whas the sd testor died on the —— day of —— witht havg revoked or altered his sd will, except as afsd, & the sd will & codl, &c., *as in* f. **3**. Death and probate of recited will and codicil.

5. Whas the sd testor died on the —— day of —— witht havg revoked or altered his sd will, except by a codl dated the —— day of ——, wch did not affect the disposons hrinbfe recited, & the sd will & codl were duly proved, &c., *as in* f. **3**. Death and probate of recited will and unrecited codicil.

(*b*) The jurisdiction of the ecclesiastical courts as to probate and administration was abolished by the Court of Probate Act, 1857, which came into operation on the 11th January, 1858; and the business of the Court of Probate was transferred to the Probate Division of the High Court of Justice by the Judicature Act, 1873, which came into operation on the 1st November, 1875. See now the S. C. of Judicature (Consolidation) Act, 1925.

(*c*) Title being made, in this case, under the will, it should appear from the recital that the proving executors were competent to assent to the vesting of the property in accordance with the devise. An executor derives his title, *i.e.* his rights in respect of the executorship from the will and retains those rights (though he cannot, until probate is granted to him, enforce them) until they are determined upon the happening of some one of the events specified in the Court of Probate Act, 1857, s. 79, or the Court of Probate Act, 1858, s. 16, now replaced by the Adm. of Estates Act, 1925, s. 5. Where, on the grant of probate before 1926 to one or some of two or more persons named as executors, liberty to prove was reserved to the others or other of them, the proving executors could, under s. 12 of the C. Act, 1911, make a good title to real estate notwithstanding s. 2 (2) of the Land Transfer Act, 1897; but where probate has been similarly granted after 1925, the proving executor or executors for the time being (whether or not liberty has been reserved to the others or other to prove) may exercise, as fully and effectually, all the powers by law conferred upon personal representatives, as if all the persons named as executors had concurred therein, *i.e.* as if he or they had been the sole executor or the only executors appointed by the will. See Adm. of Estates Act, 1925, s. 8.

Death and probate relating to unsettled property (*a*).

6. WHAS X. late of —— decd, & este owner at the time of his death in respt of the fee simple of the ppty hby assured died on the —— day of —— havg by his will dated, &c., apptd the sd A. to be the exor thof *or* the sd —— & ——, *vendors*, [& ——] to be the [general] exors throf who duly proved the same [*or* & the sd will was duly proved by the sd —— & ——, *vendors*] on the —— day of —— in the —— Probate Registry.

Death and grant of administration relating to unsettled property (*b*).

7. WHAS X. late of —— deced & este owner at the time of his death in respt of the fee simple of the ppty hby assured died on the —— day of —— intestate & letters of admon to his este were on the —— day of —— granted out of the —— Probate Registry to the sd —— & ——, *vendors*.

Assent in favour of absolute owner (*c*).

8. AND WHAS by an assent dated, &c., & signed by the sd A. as psnl repve of the sd X. decd the sd A. assented to the vestg of the ppty hby assured in the vendor as este owner in respt of the fee simple throf.

Assent in favour of trustees for sale (*d*).

9. AND WHAS by an assent dated, &c., & signed by the sd A. & B. as psnl repves of the sd X. decd the sd A. & B. assented to the vestg of the ppty hby assured in the sd C. & D., *vendors*, *or* "in themselves" as este owners in respt of the fee simple throf upon trust for sale as thrin mentd (*e*). [& it was also by

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(*a*) This and the following forms are for use where the testator died after 1925, or, having died before 1926 no express or implied assent has been given by the executors until after 1925, in either of which cases the probate and subsequent assent (see *ante*, p. 456, note (*a*)), or, if the executors are selling under their paramount power, the probate (see *ante*, p. 456, note (*a*)) will alone be material to the title.

(*b*) See note (*a*), *supra*. The title of an administrator, though it does not exist until the grant of administration, relates back in the case of both real and personal estate, to the death of the deceased. In *b. Pryse*, [1904] P. 301. Until administration is granted the real and personal estate vest in the Probate Judge in the same manner and to the same extent as personal estate formerly vested in the ordinary. Adm. of Estates Act, 1925, s. 9, overruling *John* v. *John*, [1898] 2 Ch. 573; *Re Griggs*, [1914] 2 Ch. 547.

(*c*) The provisions of s. 36 of the Adm. of Estates Act, 1925 (relating to assent) as to which, see *ante*, p. 456, note (*a*), apply equally to executors and administrators. Subject to the limitations contained in the grant of letters of administration, the administrator has all the same rights and liabilities as if he were executor: Adm. of Estates Act, 1925, s. 21.

An assent made under the former section relates back to the death of the deceased, unless a contrary intention appears.

(*d*) See *ante*, p. 456, note.

(*e*) The proper trusts will be set out in the instrument of assent so far as material. See Form No. 9 of Fifth Schedule to L. P. Act, 1925, and *post*, *sub tit.* "MISCELLANEOUS PRECEDENTS."

the same assent declared that Y. & Z. durg their joint lives & the survor of them durg his or her life had power to appt new trees of that assent *or* " that the staty power to appt new trees applied to that assent."]

Death and probate or grant of administration with will annexed of soldier's will (*f*).

10. WHAS X. late of —— decd and este owner, &c., *as in* f. **6**, died on active service on the —— day of —— havg by a letter [mem.] dated, &c., & valid as a testy disposition under the Wills (Soldiers & Sailors) Act, 1918, constituted the sd A. exor accordg to the tenor throf, & the sd letter [mem] was duly proved, &c., *or* " havg made a testy disposition valid under the Wills (Soldiers & Sailors) Act, 1918, but without havg appointed any exor throf & letters of admon with the mem contg such disposition annexed (*g*) of the real & psnl este of the sd X. were on the —— day of —— granted out of the —— Probate Registy to the sd A.

Death and proof in Scotland and confirmation in England of Scottish will.

11. WHAS X. late of —— decd & este owner, &c., *as in* f. **6**, died on the —— day of —— domiciled in Scotland, havg by his will in the form of a trust disposition & settlemt dated, &c. constituted the sd S. & T. his exors nominate: AND WHAS (*h*) the sd S. & T., as such exs nominate, have obtained confirmon of the sd will from the Sheriff [Commissary] of the county

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(*f*) The Wills Act, 1837, s. 11, as explained and extended by the Wills (Soldiers and Sailors) Act, 1918, exempts from the formalities prescribed by s. 9 of the Act of 1837, wills of real or personal estate made by soldiers or sailors on active service whether of full age or infants; but the Act of 1918, which extended the exemption to informal dispositions of real estate, has no retrospective operation: *Godman* v. *Godman*, [1920] P. 261.

(*g*) Subject to the statutory provisions relating to special executors in the case of settled land, administration with the will annexed will continue to be granted in all cases where such a grant has formerly been customary. See Jud. Act, 1925, s. 166.

Title of executors to freeholds and leaseholds under resealed confirmation and Scottish will.

(*h*) As to the reseeling of Scottish confirmations, see the Jud. Act, 1925, s. 168, and see *In the Estate of James Rankine*, [1918] P. 134. Executors under a Scottish will can, after the confirmation has been sealed by the Probate Division, make a good title to English leaseholds: *Hood* v. *Lord Barrington*, L. R. 6 Eq. 218; and consequently also to English freeholds. As to the resealing of N. Irish grants, see Jud. Act, 1925, s. 169; and see *Irwin* v. *Caruth*, [1916] P. 23; cf. also the Colonial Probates Act, 1892; and see Hanson, 6th ed., 818, for a list of British possessions to which the last mentioned Act has been applied.

Title under probate of will of domiciled foreigner.

Probate conferring upon the persons obtaining it power to deal with property situate in England may be obtained of the will of a domiciled foreigner which, though not attested as required by the Wills Act, 1837, is valid according to the law of the testator's domicil; but such a will is not effectual to pass the boneficial interest in leaseholds or real estate: *Pepin* v. *Bruyère*, [1900] 2 Ch. 504; [1902] 1 Ch. 24.

of —— in Scotland, & the same was duly recorded in the books of Council & Session on the —— day of ——: And whas such confirmon has been produced in the Ppal Probate Registry of the High Court of Justice in England, & a copy throf deposited with the Registrar [togr with a certified copy of the interlocutor of the sd Commissary (*i*), findg that the sd A. died domiciled in Scotland], & such confirmon was sealed with the seal of the Probate Division of the High Court of Justice on the —— day of ——.

Death and probate relating to settled land (*a*).

12. Whas X. late of —— decd & este owner at the time of his death in respt of the fee simple of certain settled estes situate at —— & comprising the ppty hby assured died on the —— day of —— havg by his will dated, &c., apptd the sd B. & C. to be special exors throf in respt of the sd settled estes, *or* " but witht havg apptd special exors throf in respt of the sd settled estes " & probate of the sd will limited to the sd settled estes was on the —— day of —— granted out of the —— Probate Registry to the sd B. & C.

The admission to probate of Wills made out of or within the United Kingdom of British subjects wherever domiciled is regulated by the Wills Act, 1861, ss. 1 & 2; *In the Estate of Eugene Cocqueret*, [1918] P. 4. A will admitted to probate in England under that Act is effectual to pass the beneficial interest in leaseholds: *Re Grassi*, [1905] 1 Ch. 584, and in the proceeds of real estate held upon trust for conversion: *Re Lyne's Settlement Trusts*, [1919] 1 Ch. 80. See the statutes relating to the execution of wills abroad discussed in 50 Sol. J. 540.

Separate will of foreign property.

As to probate in this country where there is a separate will of foreign property see *In b. Astor*, 1 P. D., 150; *In b. Callaway*, 15 P. D. 147; *In b. Granet de la Rue, ib.* 185; *In b. Seaman*, [1891] P. 253; *In b. Fraser, ib.* 285; *In b. Tamplin*, [1894] P. 39; *In the Estate of Von Brentano*, [1911] P. 172.

As to administration where there is a foreign will disposing of property abroad, but an intestacy as to property in this country, see *In b. Mann*, [1891] P. 293.

(*i*) If the confirmation was on or after 1st October, 1876, substitute " Sheriff " for " Commissary," and omit the words in this bracket; see the Sheriff Courts (Scotland) Act, 1876, ss. 35 *et seq.* and s. 41.

(*a*) Settled land is included among the property which, on the owner's death, devolves upon his personal representatives: Adm. of Estates Act, 1925, s. 3 (1) (ii). The owner may by his will appoint, and, in the absence of any such express appointment will be deemed to have appointed the persons (if any) who are at his death the trustees of the settlement, to be special executors in regard to the settled land (s. 22); and the special representatives to whom probate or administration has been granted (Jud. Act, 1925, s. 162) may dispose of the settled land without the concurrence of the general representatives (s. 24).

13. WHAS X. late of —— decd & este owner *as in precedg, form* died on the —— day of —— intestate & letters of admon to his este limited to the sd settled estes were on the —— day of —— granted out of the —— Probate Registry to the sd B. & C., *vendors*.

Death and grant of administration relating to settled land (*b*).

14. AND WHAS by a vestg assent dated, &c., & signed by the sd B. & C. as psnl repves of the sd X. decd the sd B. & C. assented to the vestg of the sd settled estes in the sd A. for all the este or interest thrin of the sd X. at the time of his death & it was thrby decld that the same estes were vested in the sd A. upon the trusts decld concerng the same by a trust instrument dated, &c., & made, &c., & that the sd B. & C. were trees of the settmt, subsistg under or by virtue of the sd assent & the sd trust instrument for all the ppses of the Settled Land Act, 1925 [& that the power of apptg a new tree or new trees of the sd settmt was vested in the sd A. durg his life].

Vesting assent in respect of settled land (*c*).

15. AND WHAS by a vesting assent dated, &c. [& made psuant to s. 37 of the S. L. Act, 1925 (*e*)] & signed by the sd B. & C. as psnl repves of the sd X. decd the sd B. & C. assented to the vestg of the ppty hby assured in the sd A. as este owner in respt of the fee simple throf, *or* "for all the este or interest thrin of the sd X. at the time of his death." & it was thrby decld that the premes were vested in the sd A. upon the trusts decld concerng the same by the sd will of the sd X. & that the sd D. & E. *or* B. & C. (*f*) were the trees of

Vesting assent in respect of land settled by the will of the deceased (*d*).

(*b*) Administration may be granted to the trustees of the settlement limited to the settled land: Jud. Act, 1925, s. 162.

(*c*) On the death of the owner of settled land, his personal representatives will hold the land on trust, but subject to being satisfied that due provision has been or will be made for the payment of death duties, to convey it to the person who, under the trust instrument becomes the tenant for life or statutory owner (S. L. Act, 1925, ss. 7 and 8); and the conveyance will take the form of a vesting assent which must contain the like statements and particulars as are required by the Act in the case of a principal vesting deed. Thenceforward the vesting assent and the trust instrument to which it relates will constitute the settlement, and the probate and vesting assent will constitute the material documents of title to the legal estate in the land. See S. L. Act, 1925, s. 110.

(*d*) Where the land conveyed has been settled by the will of the late owner, the testator's death and probate of the will may be recited as in f. 6, *ante*, p. 458. The vesting assent will be made by the executors under ss. 6 and 8 of the S. L. Act, 1925.

(*e*) See S. L. Act, 1925, Second Schedule, para. 2.

(*f*) As to the persons who in this case will be the trustees of the settlement for the purposes of the S. L. Act, 1925, see that Act, s. 30, sub-s. (1).

the settmt subsistg under or by virtue of the sd assent & the sd will for all the purposes of the S. L. Act, 1925 [& that the power of apptg a new tree or new trees of the sd settmt was vested in the sd A. durg his life].

TITLE.

Title to freeholds (*a*).

1. WHAS the sd A. is the este owner in respt of the fee simple of the ppty hby assured [for his own use & benefit] free from incumbces.

Title to enfranchised copyholds (*b*).

2. WHAS under an enfranchisemt *or* " a conveyce " dated, &c., & made, &c., the sd A. is the este owner in respt of the fee simple of the ppty wch was formerly copyhd of the manor of —— & is hrinar described & assured subjt to the manorial incidents affectg the same [*or* the compensation rentcharge

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If there would otherwise be no such trustees the personal representatives of the testator are constituted the trustees until other trustees are appointed: sub-s. (3), see *ante*, p. 156, note (*a*).

(*a*) For a recital of title subject to restrictions imposed by a former conveyance, see *infra*, f. 10. Where title is derived under a will particular recitals of the testator's death, probate of the will and the executor's assent (see *ante*, p. 458) will sometimes be preferable to the general recital in the text, as, for instance, where the executor's assent has operated under ss. 36 and 42 of the Adm. of Estes. Act, 1925, to give effect to an appropriation of the property to the vendor in or towards satisfaction of a share of residue.

In some few cases it may be desirable to place on record the executor's assent given previously to 1926 to a devise of property which became vested in them under the Land Transfer Act, 1897. The general recital may then run as follows: " WHAS under the will of X. late of, &c., deced, dated, &c., & the assent of K. & L. the personal repves of the sd X. who proved the sd will in the —— Probate Registry of the High Court of Justice on the —— day of ——," *or*, " and a deed dated, &c., & made betn K. & L., the psonal repves of the sd X., who proved &c. of the one pt, & the sd A. of the other pt," &c., *as in the text.* If the assent or conveyance were made before the estate was fully administered in payment of debts and subject to the charge subject to which personal representatives were by s. 3 (1) of the L. T. Act, 1897, permitted to assent or convey, add after the words " free from incumbces," " except a charge for the paymt of any moy which the psonal repves of the sd X. are liable to pay."

(*b*) The manorial incidents subject to which the enfranchisement was made will become extinguished under the L. P. Act, 1922, s. 138, upon the happening of any of the events mentioned in sub-s. 1 of that section, *i.e.* the execution of a compensation agreement, notice to ascertain the amount

hrinar mentioned] & to the rights of the lord of the sd manor [thrby] reserved on the enfranchisemt throf.

3. Whas the sd X. is the este owner in respt of the fee simple of the ppty hrinar described & hby assured as to such portions throf as are of freehd origin (wch portions comprise or are believed to comprise —— acres or thrabts but are intermixed with or orwise undistinguishable from the remaing portions throf) free from incumbs, & as to such remaing portions throf (wch were formerly copyhd of the manor of —— but were enfranchised in or about the years 18— & 19— *or* "under the provons for the enfranchisemt of copyhd ppty contd in the L. P. Act, 1922," & wch comprise or are believed to comprise —— acres or thrabts) subjt to the manorial incidents, &c., *continue* as in f. **2**. Title to freeholds and enfranchised copyholds intermixed (*c*).

4. Whas the sd A. is the este owner of the ppty hby assigned in respt of the residue of a term of —— yrs limited out of the fee simple throf & granted by the lease whrof particulars are contained in the schdle hrto. Title to leaseholds (*d*).

5. Whas the sd A. is the este owner in respt of the fee simple of the ppty described in the First Schdle hrto, & is also the este owner of the ppty described in the Second Schdle hrto in respt of the sevl terms of yrs granted by the sevl leases under wch the sevl pts throf are resply held as shown in the second pt of the same schdle. Title to freeholds and leaseholds (*d*).

6. Whas the sd A. is entitled to the ppty hby assned wch, as it is believed, is held for a long term of yrs, the origin & duration of wch are unknown, free from rent & covts. Leaseholds for unknown term.

7. Whas the sd A. is the este owner in respt of the fee simple Title subject to

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of compensation given before 1936, or the expiration of ten years from the 1st January, 1926, without any such agreement having been made or notice served. For a form of recital of title to copyholds enfranchised by operation of the L. P. Act, 1922, see *post*, Prec. III., p. 531.

(*c*) Where land subject to manorial incidents is intermixed with and held or occupied together with other land the Minister of Agriculture and Fisheries has power under the L. P. Act, 1922, s. 139 (1) (vi), upon the application in writing of the lord of the manor or the tenant, to declare what parts of the land are those subject to manorial incidents and also to declare the situation and boundaries of the parts so subject respectively. In the meantime and until such a declaration has been applied for and obtained the form in the text may be used with advantage.

(*d*) This form of recital may in some cases serve to render the draft less complex than would be the case if the lease were recited in full at the commencement in the ordinary way.

mortgage, lease or easement.

of the ppty hby assured subjt to a mtge of the same premes (togr with other ppty), for securg £—— & intt, created by a deed, dated, &c., & made, &c., by virtue whrof [*if the mtge was made before* 1926, & of the transitional provons of the L. P. Act, 1925] the premes hby assured [became *or* "have become"] vested in the sd B. for a term of three thousand years subjt to a provon for cesser upon paymt of the ppal & intt thby secd [& the benefit of wch mtge was by a deed dated, &c., & made, &c., transferred to & is now vested in the sd, &c. (*e*)], *or* "subjt to the lease *or* "right of way" *or otherwise as the case may be* hrinar mentd (*f*), but free from all other incumbces."

Title subject to various incumbrances by reference to schedule (*g*).

8. WHAS the sd A. is the este owner in respt of the fee simple of the ppty hby assured for his own use & benefit, subjt [to the sevl annuities & rent-charges specified in the first column of the first schdle hto, wch were created or charged thron by the respt instrumts mentd in the second column of the sd schdle, & are payable to the sevl psons mentd in the third column of the sd schle, & subjt also (*h*)] to the sevl mtge debts or sums mentd in the first column of the [second] schdle hto, & the intt thron resply, wch respve debts or sums & intt are sevlly secd by the respve mtges mentd in the second column of the sd [second] schdle & are now vested in the sevl psons mentd in the third column of the sd [second] schdle:

(*e*) It will conduce to clearness in some cases to insert a separate recital of the mortgage after that of estate ownership.

(*f*) With a view to shortening the operative part of the deed, the lease or easement may if preferred be fully described in this recital as follows: "Subjt to a lease dated, &c., & made, &c., for the term of —— yrs from the —— day of —— at the yrly rent of £—— [& to the covenant for renewal *or* "the covenants & agreements" therein contained] & which lease is now vested in X., of, &c.: "Subjt to a right granted [reserved] by deed dated, &c., & made, &c., to the sd X. and his succors in title, &c.," continuing description of the right of way or other easement granted.

If the parcels are contained in a schedule, the tenancies may conveniently be given in a separate column of the schedule, in which case say "subjt to the leases & tenancies mentd in the schdle hto."

(*g*) Cf. the form of recital in Vol. 2, p. 8, f. 5.

(*h*) The existence of annuities created by marriage settlement or will, or by way of family arrangement, would constitute the property settled land (see L. S. Act, 1925, s. 1 (1) (v)); and title would have to be made by the tenant for life under a vesting deed previously executed conformably to the transitional provisions of the S. L. Act, 1925.

And whas [all the sd annuities & rent-charges have been pd, &] the intt on all the sd mtge debts or sums have been pd up to the date of these psnts.

9. Whas by the effect of the sevl deeds specified in the first schdle hto, & of the acts & events in the law specified in the second schdle hto, the ppty hby assured has become vested in the sd A. as este owner in respt of the fee simple throf for his own use & benefit subjt only to the mtges specified in the third schdle hto. Title subject to mortgages depending on deeds and events (*a*).

10. Whas the sd A. is the estate owner in respt of the fee simple of the ppty hby assured for his own use & benefit, subjt to certain covts entered into by the sd A. & provons restrictive of the user throf or of pts throf contd in a deed dated, &c., & made, &c., [or implied upon the sale effected by such deed (*b*)] parlars of wch restrictive covts & provons are specified in the schdle hto ; but orwise free from incumbces. Title subject to restrictive covenants.

11. Whas under a convce dated, &c., & made, &c., the sd A. is the este owner, &c., *as in* f. **1**, subjt to the restrictive covts subjt to wch the same premes were thereby conveyed to him the parlars & nature whrof, & of the deed containing the same are specified in the schdle hto, but orwise free from incumbces. The same. Another form.

12. Whas the sd A. is the este owner, &c., *as in* f. **1**, free from incumbces except such easemts of light, &c., *as the case may be*, as on previous sales of adjoining ppty, [effected resply by the convces specified in the schdle hto] have expressly or impliedly become vested in the respective owners throf. Title subject to rights arising out of unity of ownership.

13. Whas by the effect of s. 39 of the L. P. Act, 1925, & the transitional provons in the First Schedule thereto the ppty hby assured being ppty formerly held in undivided shares became [& is now] vested in the sd A. & B. *or* "the Public Trustee" as este owner[s] in respt of the fee simple Title of trustees for sale to land formerly held in

(*a*) In the schedule a short statement of the operation of each deed should be stated, as, for example, "Deed dated, &c., & being a transfer of the mtge No. 3, on wch the ppal sum of £2,000 only remained due to the sd C.," [*or in a left-hand column the date, and in a right-hand column* "Deed of transfer of mtge of this date being a transfer to the sd —— of the ppal sum of £—— & ppty comprised thrin."]

(*b*) The words in this bracket may sometimes be required where the vendor purchased under a building scheme : see *ante*, p. 270, note (*b*).

undivided shares (*c*).

throf upon the staty trusts for sale & orwise thrin referred to.

Title of joint tenants (*d*).

14. Whas under or by virtue of a convce dated, &c., & made, &c., & the staty provons relatg to legal estes limited to persons beneficially as joint tenants the ppty hby assured has become vested in the sd A. & B. as este owners in respt of the fee simple throf & as joint tenants upon the staty trusts for sale & orwise affectg the same.

Title of joint tenants to land formerly held by them as tenants by entireties (*a*).

15. Whas by the effect of s. 39 of the L. P. Act, 1925, & the transitional provons in the First Schedule thereto the ppty hby assured being ppty formerly vested in the sd A. & B. as tenants by entireties became & is now vested in them as este owners in respt of the fee simple throf & as joint tenants upon the staty trusts for sale & orwise affectg the same.

Alteration of parcels.

16. Whas the sd ppty has been considerably altered in regard to its subdivisions & in other respts by the shiftg or removal of fences, ditches, or other boundary marks & the erection of a new mansion-house & other bldgs since the date of the sd deed of, &c., in wch the ancient description throf is contd, & the same ppty accordg to its psnt sub-divisions, quantities & abuttals, is delineated & described in the map or plan hrunto annexed & in the table of reference to the sd map or plan contd in the schdle hto.

Title to equitable interest in land.

17. Whas under or by virtue of the will, dated, &c., & proved, &c., of X. who died on the —— day of —— [*or* a settlement *or* trust instrumt dated, &c., & made, &c.], the sd A. is entitled to a life interest [*or* an entailed interest] [*or* a reversionary interest expectant on the death of ——] in the ppty described in the schedule hrto.

Title to

18. Whas under the will of K., of, &c., dated, &c., &

(*c*) See Preliminary note, *ante*, p. 437, and L. P. Act, 1925, First Schedule, Part IV. Where the property has become vested in the Public Trustee upon the statutory trusts in the first instance, and new trustees have been appointed and the property vested in them upon the statutory trusts under paragraph 1 (4) (iii), the recital in the text will be followed by a recital of the deed appointing new trustees or the order of court obtained for this purpose.

(*d*) See L. P. Act, 1925, s. 36. The above recital of title is equally applicable whether the property was originally limited direct to joint tenants, or to trustees in trust for persons beneficially entitled as joint tenants.

(*a*) See Preliminary note, *ante*, p. 437, and L. P. Act, 1925, First Schedule, Part VI.

proved, &c., the sd A. is entitled to one eql —— share of & in the sum of £—— 2½ p.c. Consold Stk (*d*), now standg in the names of, &c., subjt to the life intt of B., of, &c., thrin [& subjt to the contingency of, &c.]. stock (*c*).

19. WHAS under or by virtue of the will or testy apptmt of B., deced, late the wife of C., deced, bearg date, &c., & proved, &c., & made in psuance of a power of apptmt contd in the will of D., deced, dated, &c., & proved, &c., the sd A. is entitled to a legacy or sum of £——, payable (subjt to duty) upon the death of X., out of certain trust funds & secs in the sd will or testy apptmt of the sd B. mentd or referred to, & wch now consist of the sum of £——, &c., stk, & £—— secd on mtge, resply standg in the names of or vested in E. & F. as trees of the will of the sd D. Title to reversionary legacy or interest in personalty under will of married woman (*e*).

20. WHAS the sd A. is entitled to the poly [sevl pols] of assurce [on his own life] hby assned [subjt to the charges or incumbces thron hrinar mentd]. Title to policy or policies of assurance (*f*).

21. WHAS the sd A. is entitled to certain fixed machinery, plant & other fixtures in the nature of tenant's fixtures in or upon the sd leasehd premes wch sd fixtures are specified in the first schdle hto & also to the movable machinery, plant, utensils, furniture, materials for manufacture, manufactured goods, stk-in-trade, & other chattels & effects used in, or belongg to his sd business & trade wch are specified in the second schdle hto, & also to certain book debts the parlars whrof are specified in the third schdle hto, *or*, "in the books Title to trade, plant, book, debts, contracts, &c.

(*c*) See the forms of recitals in Vol. 2, "SETTLEMENTS (PERSONAL)," RECITALS.

(*d*) As to the reduction of the rate of interest, see National Debt (Conversion) Act, 1888, s. 2 (1); and as to the indemnity given to trustees for continuing to hold such stock, see s. 26. As to reinvestment by trustees, see s. 27 of that Act and the National Debt (Supplemental) Act, 1888, s. 8.

(*e*) See the forms of recitals in Vol. 2, "SETTLEMENTS (PERSONAL)," RECITALS.

(*f*) It is generally more convenient to give the particulars of the policies in the operative part; and doing so saves trouble in preparing the notices of the assignment to be given to the offices. If the particulars are given in the recitals, say "entitled to a poly of assurce effected in his own name for the sum of £——, payable on his death, *for an endowment policy add* "or on the day of ——, wchever shl first happen," with the —— Assurce Socy, dated, &c., & numbered ——, under the annual premium of £——."

of acct of his sd business " & has also entered into or obtained, & is entitled to the benefit of divers contracts & orders wch are specified in the fourth schdle hto for the supply of goods manufactured or sold by him, or orwise relatg to his sd business.

ORDERS OF COURT, &c.

Adjudication of bankruptcy.

1. WHAS by an order of the Chancery Division of the High Court of Justice, *or*, "the County Court of ——," dated, &c., the sd, *bkpt*, was adjudged bkpt, & the sd, *tree*, having been appted tree of the este & effects of the sd, *bkpt*, such apptmt was on the —— day of —— 19— certified as duly made by the Board of Trade (*f*).

Composition or scheme of arrangement (*g*).

2. WHAS the sd B., on the —— day of —— duly lodged with the Official Receiver a proposal for a composition in satisfaction of his debts [scheme of arrangement of his affairs] wch was duly accepted by the credors of the sd B., & approved by the High Court of Justice, *or*, "the County Court of ——," as appears by the certfe of the Official Receiver, dated ——.

Voluntary winding-upofcompany (*i*).

3. WHAS a special resolution (*h*) requirg the sd Co to be wound up voluntarily was passed at a genl meetg of the Co, held on the —— day of ——, & confirmed at a subseqt genl meetg, held on the —— day of ——, & by a resolution passed at such last mentd meetg the sd A. & B. were resply appted liquidators of the sd Co for the ppose of such winding-up.

The same. Another form (*b*).

4. WHAS the Co on the —— day of —— passed an extraordinary resolution (*a*) to the effect that it had been proved to the satisfon of the Co that it could not, by reason of its liabilities, continue its business, & that it was advisable to wind up the same, & that the sd A. shd be the sole liquidator of the Co for the ppose of such winding-up.

(*f*) The appointment of the trustee takes effect from the date of the certificate of the Board of Trade, which is conclusive evidence of the appointment: Bankruptcy Act, 1914, ss. 19(4), 143.

(*g*) See Bankruptcy Act, 1914, s. 16(2),(14).

(*h*) As to the meaning of a special resolution, see the Companies C. Act, 1908, s. 69, and Buckley, 9th ed., 162.

(*i*) See Companies C. Act, 1908, ss. 182—198.

(*a*) As to an extraordinary resolution, see Companies C. Act, 1908, ss. 169, 182.

(*b*) See Companies C. Act, 1908, ss. 182—198.

5. And whas notice[s] of the sd resolution[s] was [were] published in the *London Gazette* of the —— day of —— [& —— day of ——]. Publication of notice.

6. Whas by an order of the Chancery Division of the High Court of Justice made by Mr. Justice —— on the —— day of ——, on the hearg of a petition in the matter of the Companies Acts, 1908 to 1917 (*c*) [Companies (Consolidon) Act, 1908], & of the —— Co, it was ordered that the voluntary windg up of the sd Co be continued under the supervision of the Ct, & that such proceedings in the voluntary windg up might be adopted as the Judge shd think fit. Voluntary winding-up to be continued under supervision of Court (*d*).

7. Whas by an order of, &c., *as in last form*, it was ordered that the sd Co shd be wound up by the Court, under the provons of the Companies Acts, 1908 to 1917 [Companies (Consolidon) Act, 1908], & by an order of the sd Division made by, &c., on the —— day of ——, the sd K. was duly appted Official Receiver [liquidator] of the sd Co. Compulsory winding-up and appointment of official receiver (*e*).

8. Whas by the judgmt of Mr. Justice ——, made on the —— day of —— in an action intituled 18——, A. No. ——, A. *v.* B., in the —— Division of the High Court of Justice (being an action for the ppose of, &c.), it was amongst other things ordered, &c. Judgment of High Court of Justice.

9. Whas by an order of the Chancery Division of the High Court of Justice made by Mr. Justice —— on the —— day of —— in an action in wch the sd A. was pltf & the sd B. [& others] deft[s] (*f*) *or* "upon the applicon of the sd A. by petition [summons] In the Matter, &c." it was ordered, &c. (*g*). Order in action or on petition or summons in the Chancery Division.

10. Whas by an order (*h*), &c., *as in* f. **9**, it was ordered that the sd B. shd thenceforth be absolly foreclosed from all right of redmon in the sd mtged ppty. Order for foreclosure.

(*c*) Insert the suitable date according to the heading of the order.

(*d*) See Companies C. Act, 1908, ss. 199—204.

(*e*) See Companies C. Act, 1908, ss. 129—148; as to liquidators, ss. 149—159.

(*f*) Or "in an action *Re* X. deced, K. v. L., 19—, X., No. —— for, &c." ; or "in the sd action [matter] on the petition, &c."

(*g*) In the case of an application by summons the recital usually runs, "made by Mr. Justice —— on the —— day of —— In the Matter, &c."

(*h*) It is not necessary to recite the order *nisi*.

Order for sale by Court in foreclosure action.

11. WHAS by an order, &c., *as in* f. **9**, it was ordered that the sd mtged ppty & premes or a competent pt throf shd be sold with the approbon of the Judge & that the moy to arise from such sale shd be pd into Court to the credit of the sd action subjt to further order.

Order authorising sale out of Court of mansion house under S. L. Act, 1925, s. 65 (*i*).

12. WHAS by an order, &c., *as in* f. **9**, it was ordered that the sd A. shd be at liberty to sell the ppal mansion-house on the land settled by the recited settlmt & included in the assurce hby made in such mner, &c.

Order appointing a person to convey on behalf of infants, persons abroad, or unborn.

13. WHAS by an order of the Chancery Division of the High Court of Justice, made in the action ——, 19— A. No. ——, on the —— day of —— by Mr. Justice ——, after directg that certain ppty (being the ppty hby grted) shd be sold, & after declarg that upon such sale the defts A. & B., who are infants [out of the jurisdon of the Court], would be trees within the meang of the T. Act, 1925, [& that the intts of any unborn sons & daurs of the deft K. (who might claim under the will of P., deced., in the pleadgs mentd) are the intts of psons who on coming into existce wd be trees within the meang of the same Act] of the sd ppty, Z., of, &c., was appted to execute the convce for the ppose of conveyg the ppty so to be sold for all the estes of the sd A. & B. thrin [& for all such este or interest as unborn sons & daurs of the deft K. who might claim, &c., would on comg into existce be entitled to or possessed of in such ppty], & it was ordered that the sd Z shd execute such convce accordgly.

Master's certificate.

14. WHAS by the certfe of one of the Masters attached to the chambers of Mr. Justice ——, made in the sd action, dated, &c., & filed, &c., it was certified, &c.

Approval of Judge.

15. WHAS this deed has been [settled &] approved as a pper convce [of the sd ppty] psuant to the sd order as appears by the signature of one of the Masters attached to the chambers of the sd Judge in the margin hrof.

Order in Lunacy (*a*).

16. AND WHAS by an order in Lunacy in the matter of the Lunacy Acts, 1890 & 1891, [1890 to 1911] & in the matter of A., a lunatic *or* "a pson of unsound mind not so found by inquisition (*b*)," or "a mentally defective pson" the Judge

(*i*) See the rules under the S. L. Act, 1925. See also *post*, p. 588, note.

(*a*) For other recitals, see *ante*, p. 117.

Lunatics.

(*b*) As to the management of estates of lunatics and others, see Lunacy Act, 1890, ss. 116 *et seq.* As to lunatics not so found by inquisition, see

in Lunacy appted the sd X. to be the committee of the este of the sd A. *or* " to be the pson to exercise the powers of a committee *or* ' the recer ' of the este of the sd A."

Introductory, &c.

Contract for sale of freeholds.

1. Whas the sd A. has agrd with the sd B. for the sale & transfer to him of the fee simple of the ppty hby assured (*c*) [the sd ppty] free from incumbces [except as hrinar mentd] for the sum of £—— (*d*).

Contract for sale of freeholds or leaseholds where estate ownership is recited.

2. Whas the sd A. as such este owner as afsd has agreed with the sd B. for the sale & transfer to him of his este in the sd ppty (*c*) free from incumbces [except as hrinar mentd] for the sum of £——.

Contract for sale of leaseholds.

3. Whas the sd A. has agrd with the sd B. for the sale to him for the sum of £—— of the premes comprised in the hrinbfe recited (*e*) lease, for all the residue now unexpired of the term thereby grted as afsd, subjt to the rent reserved by & the covts & condons contd in the sd lease.

The same at rack rent (*f*).

4. Whas the sd A. has agrd with the sd B. for the assnmt to him of the premes, &c., *as in* f. **2**, in conson of the covt of the sd B. for indemnity hrinar contd.

Lunacy Act, 1908, s. 1. As to the jurisdiction of the Court in Lunacy, see *Re Earl of Sefton*, [1898] 2 Ch. 378, and cf. *Re Gaskell & Walters*, [1906] 2 Ch. at p. 10; *Re E. D. S.*, [1914] 1 Ch. 618. As to the concurrent jurisdiction of the High Court and the Judge or Master in Lunacy to make vesting orders formerly exercisable by the Judge in Lunacy, see *ante*, p. 121.

(*c*) If a right is to be reserved or restrictions are to be imposed by the conveyance say "subjt to such reservon as is hrinar contd," *or* "subjt to the restrictions hrinar contd."

Variation for sale for a rent-charge.

(*d*) In case of a rent-charge say: "In conson of the yrly rent-charge of £—— hrinar reserved & of the covts by the sd B. & provons hrinar contd."

(*e*) For several leases say, "sevl, *or*, ' respective,' hrinbfe recited," &c., and make similar alterations throughout.

(*f*) The assignment will in this case be made "in conson of the covt of the sd B. hrinar contd." In a conveyance for valuable consideration of the entirety of the land comprised in a lease for the residue of the term, a covenant for payment of the rent and the indemnity of the lessee will be implied: see L. P. Act, 1925, s. 77 (1). Where there is no valuable consideration it will be necessary to insert express covenants for this purpose.

Contract for sale of leaseholds. Alternative form (*a*).

5. WHAS the sd A., in whom the ppty comprised in the recited lease[s] is now *or where there have been mesne assignments,* "has become" vested as estate owner in respect of the sd term of —— yrs (*g*), has agreed with the sd B. for the sale & transfer to him of his estate in the sd ppty for the sum of £——.

Contract for sale of freeholds and leaseholds.

6. WHAS the sd A. as este owner in respt of the fee simple of the ppty described in the first schdle hrto, & as este owner of the ppty comprised in the second schdle hrto in respt of the sevl terms for which the sevl pts throf are resply held as thrin appearing has agrd with the sd B. for the sale & transfer to him his sd freehd & leasehd estes thrin resply for the sum of £——.

Sale by auction (*d*).

7. WHAS by the direction of the sd A., the ppty hby assured (*c*), togr with other ppty was on the —— day of —— put up for sale by public auction at, &c. [in lots accordg to certain printed parlars of sale, whrof lots —— & —— comprised the sd ppty hby assured (*e*)], & at such sale the sd B. was the highest bidder for & was declared the pchaser of the same for the sum of £——, *or,* "of lot —— for the sum of £——, & of lot —— for the sum of £——," *or,* of lots —— & —— for the sum of £——.

Introductory recitals on sale by private contract under order for sale by Court.

8. WHAS in psuance of the sd order, by an agrmt in writing, dated the —— day of —— made betn L., the pson having the conduct of the sd sale, of the one pt, & the sd B. of the other pt, the sd L. agrd, subjt to the approval of the sd Judge, for the sale of the ppty hby assured to the sd B. for the sum of £——, whrof the sum of £—— was pd by the

(*g*) Where the property is held under several leases, say: "in respt of the sevl terms for which the sd premes are resply held as hrinbefe appearing."

(*a*) The alternative form here suggested affords as much useful information as is usually contained in the ordinary form of recital of devolution of the lease, and may follow immediately after the recital of the lease where brevity is desired. If a recital of the lease is dispensed with in favour of the recital of title given, *ante,* p. 463, f. 4, the recital of the agreement for sale may be as in f. 2, *supra,* without any variation.

(*c*) For leaseholds say "the premes demised by the sd respective hrinbfe recited leases."

(*d*) This form is for use where it is necessary to refer to the auction. The forms for general use are ff. 1, 2, 3 or 5.

(*e*) For leaseholds say "the sd respective leasehold premes."

sd B. to the sd L. as a deposit upon the execution of the sd agrmt: And whas by an order made in the sd action on the —— day of —— by the sd Judge, the sd condonal contract of the —— day of —— was confirmed & ordered to be carried into effect: And whas the sd L. pd the sum of £——, *the deposit,* on the —— day of —— into Court, to the credit of the sd action [the acct afsd]: And whas the sd B., on the —— day of ——, pd the sd sum of £—— (residue of the sd sum of £——) into Court to the credit of the sd action, [the acct afsd].

9. Whas in pursuance of the sd order of Court the ppty hby assured togr with other ppty, &c., *as in* f. **7**, *saying,* " and was provisionally declared, &c."; and the sd B. thrupon pd the sum of £—— as a deposit & in pt paymt of the pchase-moy to L., the pson appted by the sd Judge to receive the same: And whas the result of the sd sale was duly certified by one of the Masters attached to the Chambers of the sd Judge by a certificate dated, &c., & filed, &c.: *continue recitals of payment into Court of deposit by L. and of the balance by B. as in* f. **8**.

Introductory recitals on sale by auction under order for sale by Court (*a*).

10. Whas the sd A. & B. as trees of the sd convce of, &c., *or* " of the sd will of the sd X. deced," *or* " under the recited assent " & in exercise of the trust for sale thrin contained [& with the consent hby testified of the sd C.] have agrd with the sd D. for the sale & transfer to him of the este in fee simple of the ppty hby assured free from inces for the sum of £——.

Contract for sale by trustees (*b*).

11. Whas the sd A. & B. as the present trees of a settmt dated & made &c., & in exercise of a power thrin contd for the investmt of moys subject to the trusts throf in the pchse of real este & at the request of the sd C. & D. have agrd with the sd E. for the pchse from him of his este in fee simple in the ppty hby assured free from inces at the sum of £——.

Contract for purchase by trustees of personalty settlement (*c*).

(*a*) See the notes to General Conditions on Sale by Auction by Order of Court *ante,* p. 287.

(*b*) Where the property has been purchased under a power of investment contained in a personalty settlement, it will usually have been conveyed to the trustees in trust for sale. If, in the absence of any express trust the sale is made pursuant to s. 32 of the L. P. Act, 1925, say, " and in exon of the trust for sale applicable thrto."

(*c*) If the settlement has been previously recited (which is not usually necessary), recite, " Whas the sd A. & B. as the psnt trees of

Contract for sale where both parties are trustees.

12. WHAS the sd A. & B. as trees, &c., *as in* f. **10**, & in exercise of the trust for sale thrin contained [& with the consent hby testified of the sd C.] have agrd to sell & the sd E. & F. as the present trees of a settlemt dated, &c., & in exercise, &c., *as in preceding form*, have agrd to pchase the fee simple of the ppty hby assured free from inces for the sum of £——.

Contract for sale by personal representative.

13. WHAS the sd A. & B. as such psonal repves as afsd, & in exercise of the staty power in that behalf conferred upon them *or for* adminors "in exon of the staty trust for sale applicable thereto," have agrd with the sd D. for the sale & transfer to him of the este in fee simple of the ppty hby assured free from inces for the sum of £——.

Contract for sale by mortgagee (*b*).

14. WHAS the sd A. in exercise of the power conferred on him by the sd mtge & the statute in that behalf has agrd with the sd C. for the sale & transfer to him of the este in fee simple of the sd B. in the ppty hby assured free from inces for the sum of £——.

Contract for sale by tenant for life under S. L. Act, (*c*)

15. WHAS the sd A. as such tree & este owner as afsd, [& pursuant to the sd Order of Court *or* " & with the consent (hby testified) of the sd trees (*d*)] has agrd with the sd C. for the sale & transfer to him of his este in the ppty hby assured free from inces for the sum of £——.

Variation where settlement recited.

the sd settlemt [will] & in psuance of the afsd power [trust] in that behalf, & at the request (hby testified) of the sd C., have agrd, &c."

(*b*) See L. P. Act, 1925, s. 88. Where property which was previously vested in trustees by way of security has, under a foreclosure order (sub-s. 2), or, by virtue of the statutes of limitation and an enlargement deed (sub-s. 3), become vested in them in fee simple (s. 31) the agreement for sale will be as in f. 10, *supra*, saying, " & in exon of the trust for sale applicable thrto."

(*c*) The above form is applicable, with the substitution of the plural for the singular, to the case of a sale by statutory owners.

The conveyance to a tenant for life on the purchase by him of land out of capital money, will be taken in the form of a subsidiary vesting deed which will contain a recital of the agreement for sale as in f. 2, *supra*, followed by a short recital of the principal vesting deed as in f. 36, *ante*, p. 449.

(*d*) See the S. L. Act, 1925, s. 65, and *post*, p. 588. A form of recital of an order giving general authority to sell the principal mansion house is given *ante*, p. 470. A sale of the principal mansion house might be effected by means of the conditional contract and confirmatory order recited in f. 17, *infra*; but in that case the contract would form part of the title.

16. Whas the sd A., by virtue of the powers conferred on him by the sd Act, *or*, "the sd Act & the Acts incorporated therewith," *or*, "the Act intituled, &c.," *or*, "the Act ——" *or*, "the —— Act, 18—" (*e*), has agrd to sell & the sd B. & C., by virtue of the powers vested in them by, &c., have agreed to pchase, &c. Contract for sale where both parties act under statutory authority.

17. Whas by a contract, dated, &c., & made, &c., the sd A. agrd with the sd B., subjt to the sanction of the High Court of Justice being obtained, for the sale to him, &c.: And whas by an order, &c., *as in* f. **8**, p. 472, the sd condonal contract was confirmed & ordered to be carried into effect, *or*, "the sd A. & his succors in title, was & were authorised to carry the same into effect." Contract for sale, subject to approval of Court, and order (*a*).

18. Whas the sd A. as such este owner as afsd lately contracted with the sd B. for the sale & transfer to him of his este in the ppty hby assured free from inces *or as the case may be* for the sum of £——, but no convce throf has yet been executed to the sd B.: And whas the sd B. has agrd with the sd C. to transfer to him the benefit of the sd contract upon the terms of the sd C. paying to him, the sd B., the sum of £——, makg with the sd sum of £——, agrd to be pd by the sd B. as afsd, the sum of £——, *or if there is no advance in price* "in conson of the sd B. being freed from all liability thrunder" (*b*). Contract for sale, and sub-contract.

19. Whas it has been agrd that the sd pchase-moy of £—— shl be payable as follows (that is to say):—£—— upon the exon of these psnts, & the residue throf by four annl instalmts of £—— each on the —— day of ——, &c., with intt on the ppal sum for the time being unpd at the rate of £—— p.c. p.a., to commence from the date of these psnts, & to be payable annually with the instalmts of ppal. Agreement for payment of purchase-money by instalments.

20. Whas by the sd parlars of sale it was stipulated that all timber & other trees of the value of £—— shd be taken by the pchaser at a valuon to be made as thrin mentd, & the timber & trees on the premes comprised in lot —— have accordgly been valued at £——. Valuation of timber (*c*).

(*e*) See Short Titles Act, 1896.

(*a*) An order made by a master in chambers is not complete and binding on the parties until it is passed and entered: *Re Thomas*, [1911] 2 Ch. 389.

(*b*) Where there is no advance in price it is usually preferable to take the conveyance direct from the original vendor: see Dart, 7th ed., 536.

(*c*) The price of the timber would usually be added to the purchase-money without the need for this recital.

Indemnity of purchaser against duties on timber (*d*).

21. WHAS upon the agrmt for the sd sale it was stipulated that the sd A. shd enter into the covts for paymt of the duty payable upon the occasion throf & for indemnity hrinar contd.

Apportionment of rent payable by tenant.

22. WHAS upon the treaty for the sd pchase, it was agrd that the yrly sum of £—— shd be the apportioned pt of the sd yrly rent of £—— payable in respt of the ppty hby assured, but that the consent of the tenant to such apportionmt shd not be required.

State of mortgage debt.

23. WHAS [the ppal sum of £——, only, pt of] the sd sum of £—— remains owing to the sd A. on the secy of the sd mtge, &c. [mtge & further charge] [& registered charge], but all intt thron has been pd up to the date of these psnts, *or*, "WHAS there is now owing to the sd A. on the secy of, &c., the ppal sum of £——, with the sum of £—— for intt thron (*e*), makg togr £——"

Agreement as to concurrence of mortgagee.

Various cases.

24. WHAS it has been agrd that the sd sum of £——, *mtge debt & intt*, shl be pd to the sd B., *mtgee*, out of the sd pchase-moy, & that he shl join in this deed in mner hrinar appearg *or*, "that the sd pchase-moy shl be pd to the sd B. in pt discharge of the sd mtge debt so owing to him as afsd"; *or*, "that the sum of £——, pt of the sd pchase-moy, shl be pd to the sd B. in pt discharge, &c."; *or*, "the sd B. havg other sufft secy for the ppal moys & intt owing to him on the secy of the sd mtge [mtge & further charge] of, &c., it has been agrd that the whole of the sd pchase-moy shl be pd to the sd A., *mtgor*, & that the sd B. shl join, &c."

Payment in discharge of stock mortgage (*a*).

25. WHAS the sum of £——, pt of the sd pchase-moy of £——, being the sum required at the current market rate to pchase the sum of £—— 2½ p.c. Consold Stk, has been pd by the sd, *pchaser*, to the sd, *mtgees*, & has been invested by them in the pchase of that sum in their names in satisfon of their sd mtge debt.

Contract for sale of freeholds

26. WHAS the sd B. has agrd with the sd A. for the pchase from him of his este in fee simple in the ppty hby assured subjt

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(*d*) See *ante*, p. 311, note (*g*). This indemnity could only be required where the charge for the duty attached before 1926 and the purchaser has notice of the facts giving rise to the charge: see L. P. Act, 1925, s. 17.

(*e*) Or "the ppal sum of £—— with some intt thron," see *post*, p. 542, note (*c*).

(*a*) See *ante*, p. 89, note (*e*).

to the recited [sd (*c*)] mtge & the sd ppal sum of £——, & the intt now due, & hrafter to accrue due thron, wch are to to borne & pd by the sd B., for the sum of £——, making, with the sd ppal sum of £——, & the sd sum of £—— now due for intt, the sum of £——. subject to subsisting mortgage (*b*).

27. Whas the sd B. has agrd to join in these psnts [for the pposes &] in mner hrinar appearg. Agreement of party to concur.

28. Whas the sd A. is desirous that the sd pchased premes shl be conveyed in mner hrinar expressed. As to form of conveyance.

29. Whas it has been agrd that [the sd pchased premes shl be assured & limited in the mner, & subjt to the rights & restrictions hrinar set forth, & that] this deed shl contain the sevl covts & stipulons hrinar expressed. The same.

30. Whas the sevl [deeds &] documts specified in the sevl schdles hto relate as well to the ppty hby assured *or* " assured by the hrinbfe recited convce " as to other ppty, & it has been agrd that the deeds & documts specified in the first schdle hto shl be retained by the sd A., that the deeds & documts specified in the second schdle hto shl be retained by the sd B. & C., & that the deeds & documts specified in the third schdle hto shl be retained by the sd D., & that such respective pties shl give such acknowmts [& (as regards the sd A. & D.) such undertakgs] in relation thereto as are hrinar contained. Introductory to acknowledgment for production, for several sets of deeds (*d*).

(*b*) For a recital of an agreement for the release of property in mortgage to the mortgagee, see Prec. XXVII., *post*, p. 566.

(*c*) See the recital of title subject to a mortgage, *ante*, p. 464, f. 7.

(*d*) See L. P. Act, 1925, s. 64. This recital is now usually omitted, but if inserted it should follow the introductory recital.

CONSIDERATION—RECEIPT (*a*).

Where the deed contains recitals.

1. In consn of the sum of £—— now *or* "upon or bfe the exon of these psnts" pd by the sd, *pchaser*[*s*], to the sd, *vendor*[*s*] the receipt whrof the sd, *vendor*[*s*] hby acknowe[s].

(*a*) See Elph. Introd., 7th ed., 103; Norton on Deeds, 200; and Vol. 2, p. 10.

Receipt in body of deed a sufficient discharge.

A receipt for the consideration in the body of the deed is now a sufficient discharge to the person paying the same: L. P. Act, 1925, s. 67. There is, therefore, no object in endorsing a receipt, except where, as in the case of some companies or public bodies, it is the practice to endorse a receipt signed by some official or agent.

Sufficient evidence for subsequent purchaser.

As against the vendor's lien for unpaid purchase money, the receipt clause operates as an estoppel in favour of a subsequent purchaser or mortgagee taking without notice that the purchase money or some part of it was not in fact paid, L. P. Act, 1925, s. 68: *Rice* v. *Rice*, 2 Drew. 73; *Hunt* v. *Luck*, [1901] 1 Ch. 45, [1902] 1 Ch. 428; *Rimmer* v. *Webster*, [1902] 2 Ch. at p. 174; *Powell* v. *Browne*, 97 L. T. 854. See also *Lloyds Bank, Ltd.* v. *Bullock*, [1896] 2 Ch. 192, where the title of equitable mortgagees was held to prevail against that of *cestui que trusts* whose trustee had previously to the mortgage conveyed the property by a deed containing a receipt clause and in the ordinary form of a conveyance in execution of a trust for sale; but cf. *Capell* v. *Winter*, [1907] 2 Ch. 376, where, upon the facts notwithstanding a receipt clause, the doctrine of estoppel was held not to apply.

Authority for payment to solicitor producing the deed.

A purchaser paying his purchase money to the vendor's solicitor on production by the latter of the deed of conveyance containing a receipt, either in the body of the deed or endorsed, for the purchase money, the deed being executed or the endorsed receipt being signed by the person entitled to give a receipt for such purchase money, is in all cases where the vendor is absolute owner fully protected without the necessity of requiring from the solicitor a special authority for such payment: L. P. Act, 1925, s. 69.

The same protection is afforded to purchasers by s. 23 of the T. Act, 1925, in cases where the solicitor producing the conveyance is acting on behalf of trustees, except where the deed is executed or the receipt signed by an attorney under a general power of attorney: see *ante*, p. 211, note (*b*); and possibly also where the solicitor is himself one of the trustees: see *Re Flower*, 27 Ch. D. 592; or where one of the trustees by whom the deed is executed and who concurred in permitting the solicitor to have the custody of it is since dead: see *Re Sheppard*, [1911] 1 Ch. at p. 59.

A solicitor employed by the Public Trustee under s. 11 of the P. T. Act, 1906, probably has authority on a sale of the trust property to receive payment of the purchase-money notwithstanding P. T. Rules, 1912, r. 20, which provides that all payments of money shall be made through the bank to the trust or estate: see Vol. 2, "Settlements (Personal)," notes to Prec. I.

Where it is desired to exclude the statutory authority, a notice countermanding it should be sent to the solicitor of the purchaser or other party by

2. In conson of the sum, &c., as in f. **1** to the sd *vendor*, for the pchase of the este in fee simple of the, *vendor*, in the ppty hby assured, *or in the case of leasehds*, " for the pchase of the leasehd este of the, *vendor*, in the ppty hby assigned " (the rect, &c.). Where no recitals.

3. In conson of the sum of £—— now pd by the sd, *pchaser*, to the sd, *Co or corporon*, *or*, " to the acct of the sd, *Co or corporon*, at the —— Bank " (the rect whrof the sd, *Co or corporon*, hby acknowe, *or*, " the rect whrof is intd to be acknowed by a memo endorsed on these psnts signed by, *some officer or agent*, & the paymt whrof the sd, *Co or corporon*, do hby also acknowe "). Where vendors are a company or corporation (*b*).

4. In conson of the sum of £—— now pd by the sd *pchaser* to the Treasurer of the sd County [Borough] Council, the rect of wch sum the sd County [Borough] Council hby acknowe. Where vendors are County or Borough Council (*c*).

5. In conson of the sum of £—— now pd by the sd, *pchaser*, at the reqt of the sd, *mtgor*, in mner followg, namely, the sum of £——, pt throf, to the sd, *mtgees*, in full [pt] discharge of the moys owing to them under their sd mtge secy as On sale by mortgagor and

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whom the money is payable. The following is a form of express authority for payment to the solicitor :

" To C. & D., *pchasers*.

Sale of ppty in ——.

We hby authorise & reqt you to pay to our solor, X., of, &c., the amt of the deposit [pchase-moy] payable by you to us on the exon of the agrmt for [complon of] the sale of the above-mentd ppty. Dated, &c. Authority by vendors for payment of purchase-money or deposit to solicitors.

Signed $\left\{ \begin{matrix} \text{A.} \\ \text{B.} \end{matrix} \right\}$ *vendors*."

(*b*) The question who can give receipts for payments made to a local authority is discussed at 49 Sol. J. 397. It appears that, subject to certain exceptions, payments to the borough fund of a municipal corporation must be made to the treasurer, Municipal Corporations Act, 1882, s. 142, *Att.-Gen.* v. *De Winton*, [1906] 2 Ch. at p. 116 ; that payments to a county fund must be made to the treasurer, Local Government Act, 1888, s. 80; and that payments to a Metropolitan Borough Council must be made to the treasurer: London Government Act, 1899, s. 9 (1). Probably all payments to Urban and Rural District Councils, except the ordinary routine payments made by the ratepayers, ought to be made to the treasurer. It is doubtful whether the provisions of the L. P. Act, 1925, s. 69, authorise payment to a solicitor of money payable to the treasurer. Receipts for payments to Local Authorities.

(*c*) See last note.

mortgagees, part of purchase-money being paid to the latter.

afsd (the rect whrof the sd, *mtgees*, hby acknowe), & the sum of £——, the residue throf, to the sd, *mtgor* (the rect & paymt in mner afsd of wch respective sums (makg togr the sd pchase-moy of £——) the sd, *mtgor*, hby acknowes).

Release of a debt owing to purchaser.

6. In conson of the sum of £—— so owing by the sd, *vendor*, to the sd, *pchaser*, as afsd, from the paymt whrof & from all claims & demands in respt whrof the sd, *pchaser*, hby releases the sd, *vendor*, & in conson of the further sum of £—— now pd by the sd, *pchaser*, to the sd, *vendor* (the rect of wch sum of £——, makg with the sd sum of £—— the sd pchase-moy of £——, the sd, *vendor*, hby acknowes).

Transfer of stock to vendor or mortgagee.

7. In conson of the sum of £—— havg immedly bfe the exon of these psnts been applied by the sd, *pchaser*, in the pchase in the name of the sd, *vendor* [*mtgee*], of the sum of £—— 2½ p.c. Consold Stk (the pchase in mner afsd of wch sd sum of stk, the sd, *vendor* [*mtgee*], hby acknowes).

Money paid into Court.

8. In conson of the sd sum of £—— havg been pd into Court as hrinbfe is recited (the paymt whrof is hby acknowed).

Rent-charge.

9. In conson of the rent-charge hrinar limited & secd to the sd, *vendor*, & of the covts by the sd, *pchaser*, hrinar contd.

Consideration appearing from recitals or other parts of deed.

10. In conson of the respective paymts & matters hrinbfe recited & of the premes [& of the covts by the sd, *pchaser*, hrinar contd, & for the other consons hrin appearg].

PARCELS (*a*).

Real Estate.

Land and houses.

1. All that piece of land contg [by estimon, *or*, "admeasuremt," *or*, "accordg to a recent admeasuremt"] —— acres, —— roods, & —— perches or thrabouts, situate in the parish [township] of —— in the county of ——, & bounded on or towards the north by land now or late of A., on or towards the south by the high road (*b*) from —— to ——, on or towards the west, &c.,

(*a*) See 1 Dav. Prec., 5th ed., 60; 275 *et seq.*; Elph. Introd., 7th ed., 116; Norton on Deeds, 211; 9 Encycl. Prec. 112. In districts where registration is compulsory it will be convenient to convey by reference to the Ordnance Map: L. T. R. 1907, 269 to 270.

(*b*) As to the right of an owner of land adjoining, a public highway of access to the highway, see *Cobb* v. *Saxby*, [1914] 3 K. B. 822.

And also all that other piece of land contg, &c., situate, &c.; & bounded, &c., togr with the messe or tenemt & outbldgs erected or standg on the sd last-mentd piece of land, all wch premes were lately in the tenure or occupon of ——, his undertenants or assns, & are now in the tenure or occupon of, &c. [*for ppty formerly copyhd add*, to wch premes the sd A. was admitted tenant out of court, *or*, " at a court held for the sd manor," on the —— day of —— on the surrender of X., *or*, " as the heir of Y. deced "] ; *for reference to schdle & plan, see* pp. 483, 484. Copyholds.

2. All that messe or tenemt, yard, garden, & outbldgs, & all those pieces of meadow or pasture land adjoing thereto & held therewith, situate, &c., & contg, &c., & now known as —— [*boundaries as in* f. **1** ; *or reference to plan, see* f. **12**, *& tenancies*]. The same. Another form.

3. All that messe or tenemt with the yard, gardens, coach-house, stables, garage, offices & outbldgs thrunto belongg, situate & being No. —— on the west side of —— street, *or*, " known as, &c., situate in the —— road," in the parish of ——, in the county of ——, & contg in width frontg, &c., —— ft, & at the back or rear throf —— ft, & in depth on the west side throf —— ft, & on the east side throf —— ft, be the same sevl dimensions little more or less, & abuttg towards the west, &c., &c. [*add reference if need be to plan, see* f. **12**, *the dimensions & abuttals being in that case given on the plan, & tenancies*]. House in town (*a*).

4. All those pieces or plots of land situate, &c. [& lately formg pt of certain fields or closes of land known as, &c.], & all those —— messes or dwelling-houses, shops, & outbldgs erected or now in course of erection on the sd respective pieces or plots of land & known as or intd to be called Numbers —, —, & —, in —— street [*add reference to plan if thought necy, see* f. **12**]. Newly-erected houses.

5. All those pieces of land & ppty, situate, &c., contg in the whole, &c., or thrabouts, & with the respective quantities & boundaries throf brinar more parlarly mentd (that is to say) ; First a piece of land called, &c., contg, &c., & bounded, &c., Secondly, &c., &c., be the sd respective quantities little more Several pieces of land.

(*a*) As to the description where the vendor owns two buildings, one partly overhanging the other, see *Laybourn* v. *Gridley*, [1892] 2 Ch. 53.

or less [or howsr orwise the sd respective lands & premes may be called, known or bounded], wch premes were formerly in the tenure & occupon of, &c., & are now (*c*) in the occupon of ——.

Farm.

6. ALL THAT messe or farm-house with the outbldgs & the sevl closes or pces of land known as the —— farm, situate in the parish of —— in the county of ——, & comprisg in the whole —— acres, &c., or thrabouts [*add parlars as in last form, or by reference to schdle & plan, & tenancy*].

A small irregular piece of land, with measurements in feet.

7. ALL THAT piece of land situate, &c., the boundary line whrof startg from the north corner throf runs towards the south-east next the —— road —— ft, & then breaks north-eastward —— ft, & from thence runs south-eastward —— ft, & then returns towards the south-west —— ft, & then runs towards the north-west in a curved line adjoing the piece of land next hrinar mentd —— ft, & then towards the north-east back to the startg point next, &c., —— ft., *add tenancy*.

Manors (*a*).

8. ALL THOSE the manors or lordships or reputed manors or lordships of, &c.

Mansion-house and estate.

9. ALL THAT mansion-house with the park, gardens, bldgs, lands, & ppty occupied or held therewith, known as the —— Este, contg, &c. [*reference to schdle & map, see* f. **12**].

Lake.

10. ALL THAT land covered with water, situate, &c., called or known as —— Lake, & estimated to comprise —— acres, or thrabouts, now in the tenure or occupon of, &c.

Land adjoining river (*b*).

11. ALL THOSE pieces of land, &c., &c., togr with half the bed or soil of the river —— where the same adjoins the sd respective

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Apportioned rent.

(*c*) Where the land is held with other land by a tenant, and the rent is to be apportioned, say, "with other lands in the occupon of —— at the yrly rent of £—— AND ALSO the yrly rent of £——," *the apportioned rent in respect of the lands conveyed*, "pt of the sd yrly rent of £——." The lessee is not bound by an apportionment made without his consent: *Bliss* v. *Collins*, 5 B. & Ald. 876; see *ante*, p. 66, note (*e*).

(*a*) See *ante*, p. 329, note (*f*). Stroud, 2nd ed., 1155. As to the meaning of a reputed manor, see Goodeve R. P., 5th ed., 311.

Rivers and highways.

(*b*) As to the presumption that half the bed of a river or half the soil of a highway passes under a grant of adjoining land, and how it may be rebutted, see *Micklethwait* v. *Newlay Bridge Co.*, 33 Ch. D. 133. *Duke of Devonshire* v. *Pattinson*, 20 Q. B. D. 263; *Pryor* v. *Petre*, [1894] 2 Ch. 11; *Mappin* v. *Liberty*, [1903] 1 Ch. 118; *Great Torrington Commons Conservators* v. *Moore*

pieces of land, & the right of fishing in the sd river, & all rights incident to the ownership of such half of the bed of the sd river, & all such other rights in or over the sd river, & the bed, soil, & water throf, as the sd, *vendor*, is entitled to as owner of the lands hby conveyed.

12. ALL THAT, &c., situate, &c., wch premes are more parlarly described in the schdle (*c*) hto & [with the respective boundaries, *or* "abuttals," throf] are delineated on the map [plan] (*d*) annexed hto, *or*, "drawn in the margin," *or*,

Reference to schedule and plan.

Stevens, [1904] 1 Ch. 347; *Thames Conservators* v. *Kent*, [1918] 2 K. B. 272; Norton on Deeds, 232, and as to the effect of a gradual change of the bed, see *Withers* v. *Purchase*, 60 L. T. 819; *Hindson* v. *Ashby*, [1896] 2 Ch. 1. It seems doubtful whether the presumption applies to an award under an Inclosure Act: *Ecroyd* v. *Coulthard*, [1897] 2 Ch. 554, at p. 567; [1898] 2 Ch. 358. It was held to apply to streets in a town in *Re White*, [1898] 1 Ch. 659; but the presumption may be rebutted by surrounding circumstances, see *Mappin* v. *Liberty*, *sup.*, and it must also be remembered that roads in a town may have formed part of a building estate, in which case the roads may have been reserved to the vendor, or the circumstances may have been such that the presumption does not apply: *Leigh* v. *Jack*, 5 Ex. D. 264; *Micklethwaite* v. *Newlay Bridge Co.*, 33 Ch. D. at p. 146. See *Postmaster-General* v. *Hutchings*, [1916] 1 K. B. 774.

Where land adjoining the foreshore is intended to be conveyed so as to pass future accretions, it should be described as bounded on the sea-ward side by the foreshore which should be approximately delineated on the plan as the only boundary line on that side. See *Mellor* v. *Walmesley*, [1905] 2 Ch. 164; *Nesbitt* v. *Mablethorpe Urban Council*, [1918] 2 K. B. 1. For the general law as to accretion, see *Brighton, etc., Gas Co.* v. *Hove Bungalows, Ltd.*, [1924] 1 Ch. 372.

Seashore.

(*c*) The schedule of parcels may be divided into columns containing, (1) the numbers on the map; (2) the names by which the fields, &c., are commonly known; (3) the state of cultivation, &c.; (4) the acreage; and (5) the names of the tenants.

(*d*) As to the care requisite in the use of a plan, and as to the difficulty of deciding between differing descriptions, see Dart, 7th ed., 1011, *Micklethwait* v. *Newlay Bridge Co.*, 33 Ch. D. 133; *Eastwood* v. *Ashton*, [1915] A. C. 900, 912; *Watcham* v. *East Africa Protectorate*, [1919] A. C. 533. The description should not be entirely dependent, as it sometimes is, on the colouring of the plan; to guard against this, the acreage or dimensions in square yards, or the lateral dimensions in feet (if a small property), should be given in the body of the deed or schedule, and not on the plan only. Colouring by a verge line makes it more difficult to tamper with the deed. It would greatly simplify the examination and comparison of parcels in abstracts if the points of the compass were always marked on plans, with the North at the top, and if it were stated on each map in what deed it was referred to.

As to use of plan.

As to the right of a purchaser to require a conveyance by reference to a plan in ordinary cases, see *Re Sansom & Narbeth*, [1910] 1 Ch. 741; 26 L. Q. R. 268.

"on the back of the —— skin," of these psnts, & thrin coloured red, *or*, "thrin surrounded by a red verge line," [such map being copied from the ordnance survey map dated in the year —— of the sd parish of ——, & such schdle being copied from the book of reference to such survey (*e*)], *or* "such map being taken &c., & the numbers in such schdle referring to the correspondg numbers in such map."

Reference to deposited plans and books of reference.

13. ALL WCH premes are delineated on the plan drawn in the margin of these psnts & thrin coloured red, & in the same plan & also in the deposited plans & books of reference of the sd railway for the sd parish of —— are distinguished by the numbers —— resply.

Schedule and plan not to control description in body of deed (*f*).

14. ALL THOSE, &c., *parcels with reference to schdle & plan*, wch schdle & plan are intd & shl be taken merely as assistg & explaing the description hrinbfe contd & not as in any way governg, controllg, restrictg or enlargg the same in the event of any variance or discrepancy betn the sd schdle or plan & the sd description, [& all other (if any) the ppty of whatever nature wch is comprised or described in the sd schdle hto, but is not comprised in the description hrinbfe contd].

Lands, connecting modern with old description.

15. ALL THOSE, &c., *modern description*, wch premes were formerly pt & pcel of lands called, &c. [were formerly described & conveyed by the description followg, namely, &c., *or*, "by the sevl names, & as in the tenure or occupon of the sevl psons, &

As to Ordnance Survey.

(*e*) The use of the Ordnance map may in some respects minimise the risk of error in the delineation of the property. On the other hand the Ordnance map is not evidence of boundaries. These are ascertained for survey purposes in a conventional manner, and do not necessarily correspond with the boundaries up to which title is shown and the property is intended to be conveyed: see *ante*, p. 261, note (*i*). If, therefore, the plan in reference to which the conveyance is to be made is prepared from the Ordnance map, the boundary line, especially if marked by hedge or ditch, should be carefully corrected in accordance with the title. Care should also be taken in referring to an Ordnance map to state what edition is referred to, as the numbers of reference are not the same in different editions. There is no book of reference to the new edition of the 25-inch scale: see *ante*, p. 261, note (*i*).

(*f*) Or the following may be used: "WCH premes by way of identificon, & not of limitation, are delineated, &c." The vendor is not entitled to insist on the insertion of qualifying words of this kind where the description of the property in the body of the deed is inadequate without reference to a plan: *Re Sparrow & James*, [1910] 2 Ch. 60.

as contg the sevl quantities mentd & set forth in the schdle, &c."].

16. ALL & SINGR the pieces or pcels of land, messes or tenemts & premes, or "All that the ppty" by the hrinbfe recited [within written] deed of, &c., grted or orwise assured. Freeholds by reference.

17. ALL & SINGR the pieces or pcels of land, messes or tenemts & premes, or "All that the ppty" comprised in or demised by the hrinbfe recited [within written] lease of, &c., *or* "the lease mentioned in the schdle hereto and particularly described in the —— column of the sd schdle. (*a*). Leaseholds by reference to lease. The same.

18. ALL & SINGR the pieces of land, mines, minerals, rights, powers, & privileges & all other the ppty & premes comprised in & demised & grted resply by the hrinbfe recited lease of, &c. Mining lease.

19. ALL THOSE pieces of land situate resply on the east & west sides of —— Road in the parish of, &c., togr with the messes & outbldgs thereto belongg erected on the sd pieces of land or pts throf resply, ALL WCH premes are known by the short descriptions contd in the third column of the schdle hto, & wch pieces of land for the pposes of identificon, but not by way of restriction or limitation, are delineated on the plan drawn in the margin of this deed, & are thron coloured pink, AND ALL OTHER (if any) the ppty & premes comprised in or expressed to be demised by the sevl leases the dates whrof & parties whereto resply are stated in the first & second columns of the sd schdle. Several leases.

20. ALL THAT the reversionary interest in fee simple, *or* "interest in remainder in fee simple" of the sd A., expectant & to take effect in posson upon the death & failure of issue of the body of the sd B., of & in all that eql undivided —— pt or share of & in all that the one undivided moiety, &c., late of the sd testor X., deced, (being equivalent to one eql —— pt of the entirety,) of & in All that, &c., or the proceeds of sale throf. Reversionary interest in undivided share of a share of realty.

21. ALL THAT perpetual yrly rent-chge of £—— charged upon & issuing out of the parcel of land delineated on the plan drawn in the margin of these psnts & thrin coloured —— Rent-charge created before

(*a*) For a plan, say, "wch premes for greater clearness, & not so as to restrict or enlarge the description hrinbfe contd, are delineated on the plan in the margin hrof, & thrin coloured, &c." For several leases, say, "the respective hrinbfe recited leases of, &c."

1882 by indenture not recited (*b*).

[togr with the messe thron known as ——, wch sd pcel of land, messe, & premes were by a convce, dated, &c., conveyed unto X., in fee simple reservg the sd rent-charge to Y., in fee simple], & all future paymts of the sd rent-charge, togr with all powers & remedies for recovery of the sd rent-charge, & the full benefit of all covts, condons, & provons contd in the sd indre of, &c., for securg the same.

Rent-charge created after 1881 (*c*) by deed recited.

22. All that perpetual yrly rent-charge of £—— created by the recited deed of, &c., & the full benefit, &c., *as in* f. **23**, *or* & the full benefit of the remedies applicable resply for recovering & compelling paymt of the same.

Coal mines without surface (*d*).

23. All the mines, veins, or seams of coal & cannel in or under all those lands, &c., togr with the full right & power of makg, sinkg, maintaing, & using all such pits, shafts, drifts, levels, drains, watercourses, & reservoirs, & of constructg, erectg, maintaing, & using all such spoil banks, railroads, tramroads, & other roads, bridges, culverts, bldgs, works, engines, machinery, & convces whatsr, & of doing all such things in, under, upon, through, or over the same lands or any pt throf as may be necy or convenient for searchg for, workg, gettg, dressg, preparg, carryg away & disposg of the same mines or seams, & the coal to be gotten thfrom, makg from time to time nevertheless to the sd, *vendor*, & his successors in title, & his & their lessees & tenants, reasble compenson for all damage thereby done or occasd to the sd lands, or any bldgs thron (*e*).

Advowson (*f*).

24. All that the advowson, & perpetual right of presenton

(*b*) For a description of several rent-charges by reference to a schedule, see *post*, Prec. LVI., p. 637.

(*c*) The rent-charge having been created after 1881, the statutory remedies implied by s. 44 of the C. Act, 1881 (repeated in the L. P. Act, 1925, s. 121), will apply whether the power under which it was created is contained in an instrument coming into operation before or after the commencement of that Act: L. P. Act, 1925, s. 121 (7).

(*d*) A very general description of minerals is "mines, minerals, salt & alum rocks, salt springs, quarries, & other substances, whether solid, liquid, or gaseous, &c."

(*e*) See also the forms of reservation of minerals & rights, *post*, pp. 492 *et seq.*; and the form of conveyance of minerals and rights previously reserved, Prec. LXIV., *post*, p. 651.

(*f*) See *Crompton* v. *Jarratt*, 30 Ch. D. at p. 318, and cf. *Re Hodgson*, [1898] 2 Ch. 545.

of & to the rectory [vicarage] of the parish church of ——, in the county of ——, & the rights & appurts thereto belongg.

25. All that the right of presenton to the rectory [vicarage] of the parish church of ——, in the county of ——, for the next avoidce of the same only. Next presentation (*a*).

26. All [& all mner of tithes of corn, grain, & hay, & all other tithes whatsr, both great & small, & pcels & portions throf, & all moduses &] rent-charges in lieu or commuton of tithes issuing or payable out of or in respt of the lands & ppty situate, &c., described in the schdle hrunder written. Tithes and tithe rent-charge (*b*).

27. Togr also with full right & liberty for the sd, *pchaser*, & his successors in title, the owners or occupiers of the sd messe & ppty, &c., his & their under-tenants & servants, [in common with the sd A., & his successors in title, & the owners & occupiers for the time being of the other houses situate, &c., *or*, "with all other psons who have or may hrafter have the like right,"] at all times hrafter, by day or by night, & for all pposes [other than of working mines or minerals] with or witht horses, carts, carriages, or waggons, [traction engines, motor cars, *or*, other than traction engines, motor cars (whether used for pleasure or for trade pposes) or any other vehicles propelled or drawn otherwise than by horse power or by human power] laden or unladen, to go, pass, & Right of way (*c*).

(*a*) See Benefices Act, 1898, and *post*, p. 638, note (*b*).

(*b*) As to the compulsory redemption of tithe rent-charge, see Tithe Act, 1918. See also Tithe Act, 1925, stabilising tithe rent-charge for the future. As to the compulsory redemption, on application for apportionment, of any apportioned part which does not exceed the yearly sum of two pounds of an annuity charged on land for the redemption of tithe rent-charge, see L. P. Act, 1925, s. 192.

(*c*) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute is a legal estate or interest in land (L. P. Act, 1925, s. 1 (2), and will enure for the benefit of the land to which it is intended to be annexed: L. P. Act, 1925, s. 187. Exceptionally to the general rule relating to legal estates in land, such an easement is capable of being held in common, *ibid.*, sub-s. (2). Easements which do not constitute legal interests in land within the definition in s. 1 of the Act, and rights in gross (*i.e.* not annexed to any particular land) subsist as equitable interests only and require to be registered as land chaeges under L. C. Act, 1925, ss. 10 (1), Class D. (iii), and 13.

As to the interpretation to be put upon a grant of a right of way which does not in express terms define the purposes for which the right is intended, see *Cannon* v. *Villars*, 8 Ch. D. 415; and cf. *White* v. *Grand Hotel, Eastbourne*, [1913] 1 Ch. 113; affirmed, [1913] W. N. 306.

repass, & to drive cattle, sheep, & other animals along, over, & upon the sd street or road, called, &c. (*d*), *or*, " leadg from —— to ——," [delineated on the sd plan & thrin coloured red], [the sd, *pchaser*, his successors in title from time to time payg his or their due proportion with such other owners or occupiers as afsd [accordg to the extent of his or their frontage] of the expse of maintaing the sd street or road & the fences adjoing the same in pper repair, until the same shl be taken over by the District Council or other local authority].

The same, to a private dwelling-house only.

28. Togr also with the right for the sd, *pchaser*, & his successors in title, the owners or occupiers of the sd messe & ppty known as, &c., his & their under-tenants & servants (*e*), at all times hrafter, but on foot only [& betn —— o'clock in the forenoon & —— o'clock in the afternoon only], *or*, " & for all pposes connected with the use & occupon of the sd messe & ppty, or any messe hrafter erected on the site throf as a private residce, but not further or orwise, with or witht horses or other animals, carts, carriages, motor cars, or waggons, laden or unladen," to go & return along & over the private road or way leadg from the sd messe & hds to —— [marked —— on the sd plan] [the sd pchaser & his successors in title, &c., at his or their expse, keepg the sd road or way & the fences & gates throf at all times in good repair & condon].

The same, for special purpose.

29. Togr with full & free right & liberty for the sd C., & his successors in title, at all reasble times hrafter, to pass & repass, with or witht horses & carts, for the ppose of carryg timber & other wood & stone from the sd lands or premes hby assured over the other lands belongg to the sd, *vendor*, situate, &c., *or as the case may be*, but for no other ppose, doing thereby no unnecy damage & makg compenson for all damage thereby done or occasd to such other land or the timber or other trees, underwood, or crops thron.

(*d*) As to what amounts to an interference with a private right of way and as to the right of access to a private right of way from the dominant tenement, see *Pettey* v. *Parsons*, [1914] 2 Ch. 653. As to what amounts to an abandonment of a right of way, see *Swan* v. *Sinclair*, [1924] 1 Ch. 254, affd. [1925] A. C. 227.

(*e*) This extends to all licensees of the grantee lawfully going to and from the dominant tenement: *Baxendale* v. *North Lambeth, &c., Club*, [1902] 2 Ch. 427; *Hammond* v. *Prentice Bros. Ltd.*, [1920] 1 Ch. 201. Compare the construction put upon the grant in *Keith* v. *Twentieth Century Club*, 73 L. J. Ch. 545, expressly mentioning " friends " and " families," and in *Thornton* v. *Little*, 97 L. T. 24, expressly mentioning " visitors."

30. Togr with full, &c., at all times hrafter to pass & repass with cattle & other animals from the lands hby assured along the roadway marked —— on the sd plan to the river —— for the ppose of waterg such cattle & other animals at the point marked —— on such plan. The same, for watering cattle.

31. Togr with the right at all times hrafter [in common, &c., *as in form* **27**, *or*, "in common as afsd,"] to use the sd roads or intd roads known as, &c., *or* "all common roads now laid out on the sd —— Este," & all sewers, drains, & water-courses now or hrafter made or passg under or along any of the sd roads. Right to use roads and drains on building estate. Short form.

32. Togr with the benefit of the covt of the sd X., contd in the sd deed, &c., for paymt of the duties *or* "succession duty" wch will become payable on the death of the sd Y., as hrinbfe mentd, & the right to be indemnified by the sd X., in respt of the liability to such duty psuant to the sd covt. Benefit of covenant of indemnity against death duties entered into by a previous vendor.

33. Togr with the benefit [in common with the vendor & other psons entitled thereto] of the covt[s] by the sd X. in the sd deed of the —— day of —— [the respective pchasers in the several ppal deeds] contd, restrictive of bldg on or user of the pieces of land thereby assured [with power in the name of the sd, *vendor*], but at the sole risk, cost, & expse of the sd, *pchaser*, & his successors in title, to enforce by action for an injunction or orwise the observce of the sd covt[s or any of them]. Benefit of restrictive covenants (*f*).

34. Or by whatsr other name or names, quantities (whether more or less), qualities, descriptions, or other parlars, the sd sevl manors, advowson, capital & other messes, farms, lands, cottages, rents, tithes, & premes hrinbfe in the first, second, Clause providing against errors in description in schedule.

(*f*) The inclusion in the parcels of the benefit of restrictive covenants affecting sold portions of property of which the residue or a part of the residue is the subject of the conveyance, is necessary, where it is intended that the benefit shall pass to the purchaser, if the covenants were not at the time they were entered into or have not subsequently been annexed to the retained portion: see *ante*, p. 358, note (*c*), and is advisable where the covenants were originally annexed to the whole of the property, a part only of which is the subject of the conveyance.

Covenants implied by reason of the property conveyed forming part of a building scheme are not in gross and, being correlative to the implied covenants subject to which the property is conveyed, are more properly referred to in the habendum: see *post*, Prec. LII., p. 624.

& third pts of this schdle described, or any of them, or any pt or pts throf resply are, or is, or has been at any time htofore called, known, tenanted, distinguished, or described, & notwithstdg any mistake, omission, or misrecital of the numbers, referces, quantities, qualities, acreages, tenants' names, or other parlars or description hrinbfe contd.

Personal Estate (*a*).

Policy of assurance (*b*).

1. All that poly of assurce, for the sum of £——, effected in the —— Assurce Socy, in the name of the sd A., payable on the death of the sd A., [*for endowment policy say* " or on the —— day of ——, 19— wchever shl happen first "] dated, &c., numbered, &c., & under the annual premium of £——, & the sd sum of £—— assured thereby, & all bonuses, addons, & moys to become payable under the sd poly, & the full benefit throf.

Several policies (*c*).

2. All those sevl pols of assurce on the lives of the sd K. & L. resply, the parlars whrof, showg the offices in wch & the psons in whose names the same resply were effected, & the sums assured thereby, & the dates & numbers throf, & premiums payable in respt of the same, are contd in the schdle hto, & all moys assured by or to become payable under such respective pols & the full benefit throf resply.

Sinking fund policy.

3. All that sinkg fund poly effected in the —— Assurce Co in the name of the sd A., dated, &c., & numbered, &c., for the sum of £——; payable on the —— day of ——, under the annual premium of £——, & the sum of £—— thereby assured & the full benefit throf.

Bond debt.

4. All that the hrinbfe recited bond, *or*, " All that bond dated, &c., under, the hand & seal of the sd A., whereby the sd A. became bound to the sd B. in the penal sum of £—— conditioned for the paymt, &c.," & the ppal moy & intt now

(*a*) See the forms Vol. 2, "Settlements (Personal)," Introductory Clauses.

(*b*) As to policies of life assurance see the Life Assurance Act, 1774 (14 Geo. 3, c. 48), and the Policies of Assurance Act, 1867: Bunyon's Life Assurance, 5th ed., pp. 7 *et seq.*

(*c*) The policies may be conveniently described in a schedule arranged in columns, giving the particulars here indicated.

due & henceforth to become due for the same, & the full benefit & advantage throf.

5. ALL THAT the sd sum of £—— owing on the secy of the sd mtge of, &c., & the intt due & to accrue due thron, & the benefit of all secs for the same. Mortgage debt.

6. ALL THE right & intt of him the sd, *vendor*, under the hrinbfe recited settlemt [will] durg his life in the stks, funds, & secs *or* "ppty" specified in the schdle hto, or wch may hrafter represent or be substituted for the same, or any pt throf, & in the intt, dividends, & annual produce throf resply. Life interest in personalty.

7. ALL THAT the share, este, & intt of him the sd, *vendor*, under the hrinbfe recited settlemt [will] expectant & to take effect in posson on the death of the sd K. [or the default or failure of issue of the sd K. by L. his wife as afsd, wchever shl last happen], of & in the stks, funds, & secs, &c., *as in last form.* Reversionary interest in personalty (*a*).

8. ALL THAT the one eql —— pt or share [& all other (if any) the pt or share], to wch the sd, *vendor*, is entitled under the sd will & codls of the sd K. as hrinbfe is recited, of & in the residy real & psonal este of the sd K., or the moys to arise from the sale, conversion, & gettg in of the same, & the intt, dividends, rents, & income throf, subjt to & after paymt of the funeral & testy expses & debts of the sd testor, & the legacies bequeathed by his sd will & codls, & the duty on any legacies bequeathed free of duty. Share of residue.

9. ALL THAT the goodwill, intt & connection of him, the sd A., of, in & concerning the business of —— [carried on by him at ——], [togr with the right to use the name of the sd A. in connection with the sd business, & to represent the sd B. as carrying on the same as the successor in business of the sd A.] Goodwill.

10. All the book debts (*b*) the parlars whrof are specified in the schdle hto *or* "are entered in the books of acct of the sd business," & the benefit of all existing contracts (*c*) & orders Book debts and benefit of contracts.

(*a*) See the form, Vol. 2, "SETTLEMENTS (PERSONAL)," INTRODUCTORY CLAUSES, notes to f. 1. Accruing shares may pass by "share": see *Re Lawrence*, 45 Sol. J. 78.

(*b*) See *ante*, p. 422, note (*a*), and p. 423 note (*c*).

(*c*) See *Ogdens Ltd.* v. *Weinberg*, 95 L. T. 567.

for the supply of articles & things manufactured by the sd *vendor* in his sd business.

Tenant's fixtures.

11. All the fixed machinery plant & other fixtures in the nature of tenant's fixtures in or upon the sd leasehd premes.

Movable chattels passing by delivery (*d*).

12. All the movable machinery, plant, utensils, furniture, materials for manufacture, manufactured goods, stock in trade, & other chattels & effects used in or belonging to the sd business.

Farming stock (*e*).

13. All the horses, cattle, sheep, poultry, & other animals, carts, waggons, agricultural implemts, machinery & utensils, stable furniture, crops gathered in, growing crops, live & dead stock in or about & all chattels appropriated for the farm known as ——.

EXCEPTIONS AND RESERVATIONS (*f*).

Exception or reservation.

1. All Those, &c., *parcels* Save & except out of the assurce hby made, *or*, "this psnt assurce," All, &c., *or*, "Except & reservg unto the sd, *vendor*, in fee simple all, &c., [And also by way of assurce, & not of exception or reservon, all, &c.].

Reservation of minerals

2. Except & reservg (*a*) unto the sd, *vendor*, in fee simple, all [coal, iron-stone, & other] mines & minerals in or under the

(*d*) Upon the sale of business premises, the movable chattels should be priced separately and transferred by delivery in order to escape *ad valorem* duty. See Prec. LXXII., *post*, p. 659.

(*e*) As to including this in a conveyance, see the note on the Bills of Sale Acts, Vol. 2, "Note on Bills of Sale."

(*f*) A reservation of a legal estate in a conveyance executed after 1925 operates at law without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made or any regrant by him: L. P. Act, 1925, s. 65. In a conveyance taking effect at common law before 1926 a reservation could only be made to one or more of the grantors, but a reservation to a stranger might operate as a grant: *Wickham* v. *Hawker*, 7 M. & W. at p. 76. In a conveyance operating under the Statute of Uses as extended by s. 62 of the C. Act, 1881, a reservation of a legal estate in favour of a stranger could be made to take effect either immediately or at any future time within the perpetuity limit. These enactments are now repealed, and a legal estate *in futuro* is now incapable of subsisting or of being conveyed or created at law whether by grant, reservation, or otherwise.

As to legal rights being annexed to the land which they are intended to benefit, see *ante*, p. 487, note (*c*).

(*a*) As to the effect of a reservation of "all rights of way hitherto exercised," see *May* v. *Belleville*, [1905] 2 Ch. 605.

lands hby assured, with full liberty & power at all times to enter upon the sd lands or any pt throf, to search for, dig, raise, make merchantable, & carry away the sd [coal, iron-stone, & other] mines & minerals [witht leavg any support for the surface of the sd lands], & with full liberty & power to make, sink, maintain, & use all such pits, shafts, levels, drains, water-courses, & reservoirs, & to construct, erect, maintain, & use all such spoil-banks, railroads, tramroads, & other roads, bridges, bldgs, works, engines, machinery, & conveniences whatsr, & to do all such things in, under, upon, through, or over the sd lands, or any pt throf, as may be necy or convenient for all or any of the pposes afsd, makg from time to time nevertheless to the sd, *purchaser*, & his successors in title, & his & their lessees & tenants, reasble & adequate compenson (*c*) for all damage thereby done or occasd to the sd lands, or any bldgs thron [other than any damage occasd by the subsidce of the sd lands].

with rights of surface working (*b*).

3. Except & reservg unto the sd, *vendor*, in fee simple, all mines & minerals in & under the sd lands hby assured, with full power & authority to work & get the same mines & minerals, but by underground workgs only, & witht enterg upon or in any mner affectg or exercisg any rights or powers whatsr in or over the surface of the sd lands, & makg, *compenson, see last form; or,* " & so that the sd, *vendor*, & his successors in title shl not be liable or responsible for any depression, subsidce, damage, or injury whatsr wch may be occasd to the surface of the sd land, or to any bldg, erection, machinery, or thing for the time being upon the sd land by the workg & gettg by the sd, *vendor*, & his successors in title, or his or their lessees of any mines or minerals in or under the sd land or any pt throf, or any adjoing land."

The same, with right of underground working only (*d*).

Variation if no compensation for injury to surface (*d*).

4. Except & reservg unto the sd, *vendor*, in fee simple, out of the assurce hby made, all mines & minerals (whether

The same. Full form.

(*b*) See *ante*, p. 350, note (*a*), and as to the construction of the reservation, *Batten Pooll* v. *Kennedy*, [1907] 1 Ch. 256. See the variations in f. 4.

(*c*) This clause operates as a covenant by the vendor: *Jones* v. *Consolidated Anthracite Collieries Ltd.*, [1916] 1 K. B. 123, 135; and, as a qualification of the right to cause subsidence (as to which see *ante*, p. 350, n. (*a*)), is enforceable against the person for the time being having that right. *Westhoughton Urban Council* v. *Wigan Coal & Iron Co.*, [1919] 1 Ch. 159, 168, 175.

(*d*) For variations, see form 1, *supra*.

already opened & in workg or not) in or under the lands hby assured, & every pt throf, & in or under all roads or ways intersectg the sd lands, or any pt throf, & in or under all roads or ways boundg the same lands, to the centre of such roads or ways (other than clay, marl, gravel & sand, wch can be gotten witht going under or passg through any seam or vein of coal or ironstone), & wch mines & minerals (other than & excludg such clay, marl, gravel & sand as afsd) are hrinar referred to as the excepted mines & minerals: with full power for the sd, *vendor*, & his successors in title, & his & their lessees, agents, servants, & workmen, to search for, get, take, & carry away, & have & take the rents & profits of the excepted mines & minerals; & to sink any pits or shafts, & excavate & drive any underground levels, pits, passages, adits, & headways, & to make & lay down any rlys, tramways, or other ways or roads, above or underground, & to make & lay down any sidings, tramways, or other communicons with or to the —— Rly, & to erect & build any offices, bldgs, engines, pumps, machinery, works, or conveniences, & to place, stack & lay up any coal, cannel, or other minerals, earth, & rubbish raised or to be raised out of any of the sd mines upon such pt of the sd lands as is coloured —— on the sd map or plan, for the ppose of gettg & workg the excepted mines & minerals [& any mines or minerals in or under the other lands belonging to the sd, *vendor*, wch are coloured —— on the sd map or plan]: & also to make & use for the ppose of the carriage, sale, & delivery, not only of the excepted mines & minerals [& of all mines or minerals in or under the other lands afsd], but also of all materials, articles & things wch the sd, *vendor*, & his successors in title, or his or their lessees, agents, servants, & workmen, may desire to carry or convey to or from any collieries or works for the time being existing on any of the lands coloured —— in the sd map or plan, & for any ppose connected with the use & enjoymt of the sd respective collieries & works, mines & minerals, a tramway from the point marked A to the point marked B on the same map or plan on the line marked —— thron, but subjt nevertheless to the right of the sd, *pchaser*, & his successors in title, to make & use any rail or tramways or other roads or ways over, across, or under the sd tramway, but so as not unnecessarily to obstruct or impede the use & working throf: PROVD NEVERTHELESS that no surface rights

shl be exercisable under or by virtue of the afsd exceptions & reservons, except in & upon the sd lands coloured —— in the sd map or plan, & that the sd, *vendor*, & his successors in title (hrinar called the mine owners), shl from time to time on demand, make all due compenson to the sd, *pchaser*, & his successors in title (hrinar called the surface owners), & the occupiers for the time being of such lands for all such injury or damage as may be done to any bldgs on the sd lands hby assured, or wch may be erected thron for agricultural pposes, arisg from any act or neglect in workg or gettg the excepted mines & minerals [or the mines or minerals in or under the other lands afsd], or orwise in the exercise of any of the powers or authorities hby excepted or reserved; & that the mine owners shl also previous to using any of the lands wch they are hby authorised to use, remove the turf & surface soil from the pt of the land about to be used by them, & lay up the same in heaps in some convenient pt of the land; & shl also from time to time fence off with good & substantial posts & rails such pts of the lands wch they are hby authorised to use as they may dig into, occupy, or use by virtue of any of the exceptions or reservons hrin contd, & at all times hrafter keep & preserve such fences in good & substantial repair; & shl also pay to the surface owners for every acre of the lands wch the mine owners shl from time to time enter upon, use, or occupy by virtue of any of the sd exceptions or reservons, the yrly rent of £——, & so in proportion for any greater or less quantity than an acre, by four eql qtrly paymts, on the —— day of ——, &c., clear of all deductions (except ppty tax), the first paymt of such rent, or an apportioned pt throf, to be made on such of the sd qtrly rent days as shl happen next after any such lands shl be entered upon, used, or occupied, & the sd rent shl continue payable until the land shl be levelled & [the turf & surface soil replaced] restored fit for agricultural pposes, & the posson throf delivered up to the surface owners, & shl be recoverable by distress as rent reserved on common demises; & that the mine owners shl also pay all rates & taxes for the time being payable (except ppty tax) in respt of the land so entered upon, used, or occupied, & shl also on demand from time to time pay the surface owners, or the occupiers or tenants for the time being of the sd lands, reasble compenson for any damage occasd to any grass, corn

or other crops growg upon the sd lands at the time of entry thron; & that all questions of compenson shl in case of disagrmt be settled by two arbitrors or their umpire; & that these stipulons, so far as they purport to affect the sd, *vendor*, shl bind him & his successors in title, & shl also bind the excepted mines & minerals, & the owners throf for the time being.

Reservation of right of way (*a*).

5. Except & reservg unto the sd, *vendor*, in fee simple, full & free right & liberty at all times hrafter & for all pposes connected with the use & occupation of —— &c. *See* pp. 487, 488.

Reservation of right to take water from reservoir (*b*).

6. Except & reservg unto the sd, *vendor*, in fee simple, the sole & exclusive right & liberty at all times hrafter of using the water from the reservoir distinguished in the sd plan by a blue colour, for supplying water to the messe & bldgs called ——, now in the occupon of the sd, *vendor*, or any messe or bldgs wch may hrafter be erected on the site throf, in as full & ample a mner as htofore, but for domestic, stable, or horticultural pposes only: And also the free & uninterrupted flow & passage at all times hrafter of the water from the sd reservoir for such pposes through the pipes & tanks now used for conveyg the same under the lands hby assured, along the lines distinguished by a red colour & the letters E E on the sd plan, & through any pipes & tanks wch may from time to time be substituted for the same; And also liberty from time to time, with workmen & others, to enter upon the sd lands, & to repair, renew, cleanse, & maintain the sd reservoir, pipes, & tanks, the sd, *vendor*, & his successors in title, givg to the sd, *pchaser*, & his successors in title, & his & their tenants, reasble notice previous to such entry, & doing thereby no unnecy damage to the surface of the sd lands, or the timber,

(*a*) See L. P. Act, 1925, s. 187, and *ante*, p. 487, note (*c*). The land to which the right of way is intended to be annexed should be defined in order to take advantage of the section. As to the effect of a reservation of "all rights of way hitherto exercised," see *May* v. *Belville*, [1905] 2 Ch. 605. As to implied reservations of necessary easements, see *Wheeldon* v. *Burrows*, 12 Ch. D. at p. 49; *Taws* v. *Knowles*, [1891] 2 Q. B. 564; Norton on Deeds, 255. For an express reservation of a right to light, see *post*, *sub tit.* "Exchanges."

(*b*) For variations see f. 1, *ante*, p. 492. In the absence of express power the grantee may enter and repair the pipes: *Goodhart* v. *Hyett*, 25 Ch. D. 182, where the authorities are discussed: see also *Jones* v. *Pritchard*, [1908] 1 Ch. at p. 638.

trees, underwood, or crops thron, & making full compenson for all damage done or occasd to the surface of such lands, or the timber, &c., by the exercise of such liberties as afsd.

7. EXCEPT & ALWAYS RESERVG unto the sd A., in fee simple, the full & free right & liberty at all times hrafter to work the quarry situate in the sd lands hby assured at the point marked —— in the sd plan, & to take & carry away the stone thfrom over the sd lands hby assured for the ppose of, &c., but for no other ppose, doing no unnecy damage, &c., & makg compenson, &c., *as in last form*, & so nevertheless that the sd B., & his successors in title, shl not by the reservon hrinbfe contd be in any way precluded from workg the sd quarry & takg the stone thfrom to such extent as he or they may think fit. Reservation (non-exclusive) of right to work quarry.

GENERAL WORDS (*a*). ESTATE CLAUSE.

1. TOGR with all bldgs (*b*), erections, fixtures, hedges, ditches, fences, ways, passages, waters, drains, water-courses, woods, Lands.

(*a*) General words were before the C. Act, 1881, usually inserted in conveyances of land immediately after the parcels (and before the reservations if any), but are now universally omitted, as they were supplied by section 6 of that Act which section (replaced by s. 62 of the L. P. Act, 1925) provided that a conveyance of land, or of land with buildings thereon, or of a manor, should imply the usual general words intended to pass the easements or other rights and appurtenances belonging thereto, unless a contrary intention were expressed or indicated. Express general words less extensive than those in the Act are not sufficient to show such a contrary intention: *Hansford* v. *Jago*, [1921] 1 Ch. 322, 332; and the fact that the adjoining lands are referred to in the conveyance as building land is not alone sufficient to indicate a contrary intention: *Broomfield* v. *Williams*, [1897] 1 Ch. 602; *Pollard* v. *Gare*, [1901] 1 Ch. 834. Omission of general words.

A right in gross and incapable of being annexed to land cannot pass under general words in a conveyance: *Morris* v. *Dimes*, 1 Ad. & El. 654; *Staffordshire, &c., Navigation* v. *Bradley*, [1912] 1 Ch. 91; and the general words supplied by the Act, owing to their general character, will not operate to pass specific rights and easements such as cannot be implied from the circumstances of the case, and will not, therefore, extend to any right or easement which the vendor at the time of the conveyance had no power to grant; *Godwin* v. *Schweppes, Ltd.*, [1902] 1 Ch. 926; *Quicke* v. *Chapman*, [1903] 1 Ch. 659; nor will they extend to any advantage or right due to or

(*b*) For a house in a town add after "buildings," "outhouses, fixtures, cellars, areas, ways, passages, lights, sewers, gutters, drains, rts, &c.," as in the text. House in town.

underwoods, commons, mines, minerals, rights, easemts, & appurts whatsr, to the sd hds & premes or any of them, or

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comprehended within the general rights of an occupying owner of the property over which the right is alleged to exist: see *Long* v. *Gowlett*, [1923] 2 Ch. 177, at p. 200. With these qualifications the statutory general words by force of the words "appertaining or reputed to appertain" may be said to cover all legal rights and easements existing at the time of the conveyance, and by force of the words "enjoyed with, &c.," to cover all rights and privileges then actually enjoyed with the land, though the enjoyment is wholly permissive and precarious; *International Tea Stores* v. *Hobbs*, [1903] 2 Ch. 165; *Lewis* v. *Meredith*, [1913] 1 Ch. 571; see also *Barlow* v. *Rhodes*, 1 Cr. & M. at p. 448; *Baring* v. *Abingdon*, [1892] 2 Ch. 374; *Hansford* v. *Jago*, [1921] 1 Ch. 322; *White* v. *Williams*, [1922] 1 K. B. 727. For the purposes of s. 62 of the L. P. Act, 1925, the right to compensation for manorial incidents on the extinguishment thereof is deemed to be a right appertaining to the manor.

The words "heretofore held, &c.," contained in the text, but omitted from the statutory general words, may in some cases have the effect of reviving a legal right the enjoyment of which at the time of the conveyance had wholly ceased; *Hall* v. *Byron*, 4 Ch. D. at p. 672.

Contracts

The L. P. Act, 1925, s. 62, does not apply to contracts; and therefore if the general words implied by that section are wider than what has been contracted for, the vendor may restrict them: *Re Peck & London School Board*, [1893] 2 Ch. 315; *Re Hughes & Ashley*, [1900] 2 Ch. 595; *Re Walmsley & Shaw*, [1917] 1 Ch. 93; Gale on Easements, 8th ed., 85; *ante*, p. 352, note (*d*).

Apart from express grant or reservation there may sometimes be implied a grant or reservation of such easements as may be necessary to give effect to the common intention of the parties to the conveyance: *Pwllbach Colliery Co., Ltd.* v. *Woodman*, [1915] A. C. 634, 646; *Hansford* v. *Jago*, *sup.* & cases there cited; *Cory* v. *Davies*, [1923] 2 Ch. 95; and cf. *Re Walmsley & Shaw*, *sup.*

Where therefore a *quasi*-easement or privilege is known to exist, but, not being included in the contract, is intended to be excluded from the conveyance, it should be expressly excluded. On the other hand, if intended to be granted, it should, notwithstanding the above cases, be expressly granted. The following is a form of exclusion intended to follow the *habendum*:—

"PROVIDED ALWAYS THAT this assurce shl not include or operate as a grt or assurce of" (*state easement or privilege intended to be excluded*) "now [htofore] held or enjoyed with the sd premes hby assured or any pt throf."

Minerals.

The clause does not, except in the case of a manor, mention "mines and minerals," which were often included in the general words, though improperly, as they are not appurtenances, but form part of the land, and would pass with it unless expressly excepted, *Mitchell* v. *Mosley*, [1914] 1 Ch. at p. 450, except in the case (*a*) of conveyances to railway companies, see Railway Clauses C. Act, 1845, s. 77, (*b*) of conveyances under the Public Health Act, 1875, or any General or Local Act or Provisional Order to a local authority for the purposes of works of sewerage, drainage, sewage disposal, lighting, or water supply, see Public Health, &c., Act, 1883, ss. 2, 3, the latter of which incorporated the provisions of

any pt throf belongg, or with the same now or htofore held, used, occupied, or enjoyed (*a*), or reputed or known as pt or pcel throf, or appurtenant thereto.

Estate clause (*b*).

2. AND ALL the este, intt, right, title, claim, & demand of the sd, *vendor* [of the sd, *conveying pties*, resply], in, to, or upon the sd premes, or any pt throf; *if the conveyance is made under a statutory power, add* " or wch he [they or any of them] can by statute or orwise convey."

HABENDUM (*c*).

For freeholds.

1. TO HOLD all the ppty hby assured UNTO the sd, *pchaser*, in fee simple, [subjt to, &c., *state or refer to the tenancies or any incumbces & liabilities subjt to wch the ppty is conveyed, see below* (*d*)].

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the Waterworks Clauses Act, 1847, ss. 18 to 27 (both inclusive) with respect to mines; (*c*) of land sold by an ecclesiastical corporation for the purpose of redeeming land tax charged on its other lands: see Land Tax Redemption Act, 1802, s. 80, and (*d*) land compulsorily acquired for small holdings. See Small Holdings and Allotments Act, 1908, Schedule I. In a mineral district they should be specially mentioned. As to what passes with a " manor," see *ante*, p. 329, note (*f*).

Fixtures.

The statutory as well as the ordinary clause specifies " fixtures; " but this is immaterial, as a conveyance of land of any tenure would carry all fixtures belonging to the vendor without express mention, including trade or other tenant's fixtures, *i.e.*, such as would be removable as between landlord and tenant; see 2 Dav. Prec., 4th ed., pt. 2, pp. 177 *et seq.*; see also Vol. 2, pp. 159 *et seq.* If any fixtures are not intended to pass they must be excepted.

Registered land.

The general words implied in conveyances under the L. P. Act, 1925, are to apply, so far as applicable thereto, to dispositions of a registered estate: L. R. Act, 1925, ss. 19 (3), and 22 (3).

(*a*) See *International Tea Stores* v. *Hobbs*, [1903] 2 Ch. 165.

Omission of "the all estate" clause.

(*b*) The "all estate" clause (see Norton on Deeds, 249, and *Price* v. *John*, [1905] 1 Ch. 744), which formerly followed the " general words," is now implied by the L. P. Act, 1925, s. 63, in all conveyances unless a contrary intention is expressed or is to be gathered from the terms of the instrument, so that it is universally omitted: see *Thellusson* v. *Liddard*, [1900] 2 Ch. 635, a case of a grant of an equitable leasehold interest. Such a clause may be controlled by a recital; see *Ex p. Dawes*, 17 Q. B. D. 275; or excluded by the contract for sale: *Re Hughes & Ashley*, [1900] 2 Ch. 595. A short form of general words and estate clause is given in the text, as it may be of use in conveyances of land in the colonies.

(*c*) As to the habendum, see Elph. Introd., 7th ed., 126; Norton on Deeds, 279; and Shep. Touchst. 74.

Words of limitation.

(*d*) In a grant of real estate the addition of the word " heirs " or its statutory equivalent " in fee simple " (see C. Act, 1881, s. 51; L. P. Act, 1925, s. 60 (4)) was formerly necessary in order to confer upon the grantee

Short form.

2. To HOLD UNTO the sd, *pchaser*, in fee simple (*e*), [*subjt, &c., to tenancies or incumbces*].

Subject to tenancies (*a*).

3. To HOLD, &c., *as in* f. **2**, subjt if & so far as subsisting (*b*)

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formerly necessary in grants of legal and equitable estates in fee simple.

an estate in fee simple whether legal (Co. Litt. 1a) or equitable (*Re Whiston* [1894] 1 Ch. 661; *Re Hudson*, 72 L. T. 892; *Re Irwin*, [1904] 2 Ch. 752; *Re Monckton*, [1913] 2 Ch. 636); an equitable limitation by way of trust executed having the same construction as a legal limitation, whether or not a general intention to the contrary is to be found in the document: *Re Bostock*, [1921] 2 Ch. 469, reviewing the earlier cases, and overruling *Re Tringham*, [1904] 2 Ch. 487 and similar decisions. But now by s. 60 of the L. P. Act, 1925, a conveyance of freehold land to a person without words of limitation or any equivalent expression passes to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land unless a contrary intention appear in the conveyance. It, however, seems advisable to continue the use of the expression "in fee simple" in the habendum so that there may be no question as to the estate to which the implied covenants for title set out in Part I. of the Second Schedule to the Act apply: see Preliminary Note, *ante*, p. 435.

Advantage of using the words "in fee simple."

Where words of limitation were necessary, the word "heir" in the singular or the words "in fee" alone were insufficient: *Re Ethel*, [1901] 1 Ch. 945; *Re Ford & Ferguson*, [1906] 1 Ir. R. 607; *Re Davison*, [1913] 2 Ch. 498.

Grant of base fee.

It is not clear whether, if the grantor had only a base or other determinable fee in the property conveyed, the use of the statutory words "in fee simple" would have been as effective as the word "heirs" to pass the whole of the estate of the grantor therein.

Releases by joint tenants and coparceners.

One of two or more joint tenants or coparceners might release to the other or others of them without words of limitation: Co. Litt. 9 b.

Grants to corporations aggregate.

Words of limitation were never necessary in grants to corporations aggregate: Co. Litt. 9 b; *ib.* 94 b.; *Re Woking U. D. C., &c., Act*, 1911, [1914] 1 Ch. at p. 307; but the addition in such cases of the words "in fee simple" may be justified as descriptive of the estate to which the implied covenants for title are intended to relate.

Grants to corporations sole.

The word "successors" was formerly necessary in order to pass the fee simple upon a grant to a corporation sole. Without it, a life estate only passed: Co. Litt. 94 b; but now by s. 60 (2) of the L. P. Act, 1925, a conveyance of land to a corporation sole by his corporate designation without the word "successors" passes to the corporation the fee simple or other the whole interest which the grantor had power to convey in such land unless a contrary intention appears in the conveyance.

(*e*) See Preliminary Note, p. 439.

(*a*) The existence of leases as of other incumbrances affecting the property should be noted in the *habendum* in order to qualify the covenants for title implied by the vendor being expressed to convey "as beneficial owner" (see *post*, p. 507, note).

(*b*) The object of these words is to safeguard the purchaser against the operation of s. 65 (2) of the L. P. Act, 1925, in case the lease should be voidable at the date of the conveyance. The sub-section enacts that a conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance,

to a lease dated, &c., whereby the premes were demised to K., for the term of —— yrs from the —— day of ——, at the yrly rent of £——, *or*, " to the leases & tenancies hrinbfe, *or*, ' in the schdle hto ' mentd," *or*, " to the subsistg leases & tenancies."

Thesame.

4. To HOLD, &c., *as in* f. **2**, subjt if & so far as subsistg (*c*) to a lease dated, &c., whereby the premes (togr with other lands & ppty) were demised, &c., at the yrly rent of £——, of wch the yrly rent of £—— shl be the apportioned pt to be henceforth payable in respt of the premes hby assured, & with the benefit of such apportioned rent, & all powers & remedies for the recovery throf, & of the covts by the lessee, & condons contd in the sd lease so far as the same relate to the premes hby assured, AND SUBJT to the payment of a yrly sum of £——, under the provons of the Tithe Acts as an apportioned pt of the tithe rent-charge for the sd parish of ——, as charged upon certain lands of wch the premes hby assured form pt.

Where the rent payable by the tenant and also the tithe rent-charge is apportioned(*d*).

Subject to mortgage, rent-charge or timber duties (*e*).

5. To HOLD, &c., *as in* f. **2**, subjt to the hrinbfe recited [sd] mtge, & the ppal sum of £—— now owing on the secy throf, & the intt due & to become due on such sum from the —— day of —— last, *or*, " to the paymt of the sd yrly rent-charge of £——," *or*, " subjt to the duty now payable by reason of the death hrinbfe recited of the sd X. in respt of the premes, but with the benefit of the covt by the sd *vendor* for the indemnity of the sd *pchaser* hrinar contd.

Subject to obligations and restrictive covenants.

6. To HOLD, &c., *as in* f. **2**, subjt to the obligons & restrictions hrinar expressed & imposed on the sd, *pchaser*, as obligations intended to be bindg in perpetuity on the ppty hby assured.

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shall operate as a reservation, unless a contrary intention appears. If, therefore, no words expressive of a contrary intention were to be inserted, the sub-section might be held to operate so as to confirm a previously voidable lease. Cf. the operation attributed to the words " subject to " in *Davenport* v. *Smith*, [1921] 2 Ch. 170, distinguished in *Atkin* v. *Rose*, [1923] 1 Ch. 522.

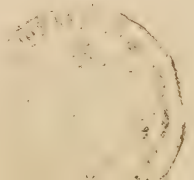
(*c*) See note (*b*), *supra*.

Apportionment —of rent, of tithe rent-charge.

(*d*) A covenant to pay rent is divisible on an assignment of the reversion of part of the demised premises, see *ante*, p. 67, note.

An informal apportionment between the parties to the conveyance does not affect the tithe owner, who can recover the tithe rent-charge from any part of the lands. To bind him there must be a statutory apportionment under the Tithe Acts. Information and forms for statutory apportionment can be obtained from the Ministry of Agriculture and Fisheries, Old Bailey, E.C.

(*e*) See *ante*, p. 311, note (*g*), and *ante*, p. 476, note (*d*).



Subject to reservations and restrictions in a former conveyance (*f*).

7. To HOLD, &c., *as in* f. **2**, subjt to such exceptions & reservons of the —— & other mines & minls in & under the sd lands & premes, & rights of workg & gettg the same, & orwise in relation thereto, & to such rights of way & water, & other easemts & rights, as were by the hrinbfe recited deed of, &c., excepted or reserved to or in favour of the sd X., in fee simple, or orwise: but with the benefit (*g*) of the provons in the said deed contd for compensatg the sd, *vendor*, & his successors in title, in respt of land taken or occupied for the ppose of, or damage done in workg or gettg the sd mines & minerals, or the exercise of the powers & liberties thereby given to the sd X.: AND subjt also to the covts by the sd, *vendor*, & provons in the same deed contd, restrictive of the right of bldg on, or user of the sd lands & premes or orwise.

Subject to restrictive covenants.

8. To HOLD, &c., *as in* f. **2**, subjt to the covts by the sd A. & provons contd in [or implied upon the sale effected by (*h*)] the hrinbfe recited deed of, &c.

Subject to rights arising out of unity of ownership.

9. To HOLD, &c., *as in* f. **2**, subjt to the rights & easemts to wch the same ppty is now subjt as afsd (*i*), *or* "to the rights & easemts vested in the owners of adjoining ppty under or by virtue of the deeds specified in the schdle hto."

Freeholds free from a specified incumbrance.

10. To HOLD, &c., *as in* f. **2**, discharged from all ppal moys & intt intd to be secd by, & from all claims & demands under the hrinbfe recited mtge [*or* legal charge], &c., [and to the intent that the sd mtge term of 3000 yrs, *or* "the mtge term created by the sd mtge" shl so far as it affects the ppty

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Restrictive covenants.

(*f*) The vendor cannot insist on the purchaser taking a conveyance subject to incumbrances other than those subject to which the property was sold: see Williams, V. & P., 3rd ed., 646. If any such exist, the vendor must obtain their release. If they are not such as can be released, the purchaser may elect to take subject to them and without any mention of them being made in the conveyance unless the vendor by executing the conveyance in that form will incur liability under his covenant for title: see *Re Monckton & Gilzean*, 27 Ch. D. 555; *Hardman* v. *Child*, 28 Ch. D. 712; cases in which the vendors being trustees incurred no such liability. In *Re Wallis & Barnard*, [1899] 2 Ch. 515, a vendor was held bound to execute a conveyance framed without mention of existing restrictive covenants; but *query* whether the resulting liability of the vendor to indemnify the purchaser under her covenant for title as beneficial owner was not in this case overlooked.

(*g*) In general everything which is intended to pass by the conveyance should precede the habendum: see Norton on Deeds, 284.

(*h*) See *ante*, p. 465, note (*b*).

(*i*) See *ante*, p. 465, f. 12.

hby assured merge in the fee simple of the sd premes and be extinguished (*a*)] [but subjt, if & so far as subsistg, *to leases, &c.*].

11. To HOLD, &c., *as in* f. **2**, free from all right or equity of redmon, & from all claims & demands under the hrinbfe recited mtge [*or* legal charge]. Freeholds free from equity of redemption (*b*).

12. To HOLD, &c., upon & subjt to the same trusts & powers as are declared by the ppal vesting deed by reference as afsd with respt to the property thrin comprised. Freeholds purchased out of capital money subject to a settlement of land (*c*).

13. To HOLD, &c., UPON TRUST that, *the trees*, shl with the consent in writing of the sd, *tenants for life*, or the survor of them & after the death of such survor at the discretion of, *the trees*, sell the sd ppty & premes hby assured & shl stand possed of the pceeds of such sale after paymt of the costs throf & also of the rents & profits of the sd ppty & premes or of the unconverted pt throf for the time being Upon the trusts & with & subjt to the pwrs & provons wch, under a settlemt dated, &c., & exted in contemplon of the marre shortly aftwds solemnised betwn —— & —— are declared & now subsisting with respect to moy forming pt of the trust fund (*e*) thby settled, *or*, " wch under the will of X., late of, &c., deced, dated &c., are declared & now subsisting with respect to moy forming pt of the residg este of the sd testor," *or as the case may be*. Freeholds upon trusts of personalty settlement (*d*).

14. To HOLD, &c., UPON THE TRUSTS & subjt to the powers The like

(*a*) Having regard to L. P. Act, 1925, s. 5 the words in brackets are not required to merge the term (if any) vested in a mortgagee who joins in the conveyance and is paid the amount owing to him on the mortgage. Where, however, the mortgagee joins to release part only of the property comprised in his security, it may be advisable, notwithstanding sub-s. (3) of the same section, to make the intention clear.

(*b*) Section 88 of the L. P. Act, 1925, provides that upon any sale of mortgaged property by the mortgagee, whether under his statutory or express power of sale, the mortgage term or the charge by way of mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land conveyed.

(*c*) See Settled Land Act, 1925, s. 10, and Form No. 4 in the First Schedule to that Act.

(*d*) See *post*, p. 572, note (*f*); and L. P. Act, 1925, s. 32. This form of habendum keeps the trusts of the money off the title to the land unless and until the land is actually conveyed to a person who is *sui juris* and absolutely entitled to the net proceeds of sale under the settlement or will, and having regard to the provisions of s. 2 of the L. P. Act, 1925, should be adopted in preference to the alternative form following.

(*e*) Where there are several trust funds, the particular fund intended should be indicated.

where the trusts are disclosed.

& provons upon & subject to wch the same premes ought to be held by virtue of the sd settlemt of, &c. [the sd will & codls of the sd X.]."

Freeholds to lessee where there is a sub-lease (*f*).

15. To HOLD, &c., *as in* f. **2**, subjt to the sd term of —— yrs created by the sd lease of, &c., & to the intent that the sd term may be henceforth absolutely merged in & consolidated with the reversion in fee simple of the sd ppty expectant on the determon of the same term, but not so as to prejudice or affect the sd underlease of &c., & so that the benefit of the rent reserved by & the covts on the pt of the lessee & condons contd in the sd underlease, shl henceforth be & remain incident & annexed to the freehd of the same premes.

Leaseholds (*h*).

16. To HOLD the same UNTO the sd, *pchaser*, henceforth for all the residue now unexpired of the sd term of —— yrs (*g*) grted by the sd lease, subjt henceforth, *or*, " as from the —— day of ——," to the paymt of the rent & the pformce & observce of the covts on the pt of the lessee & condons by & in the same lease reserved & contd [& subjt if & so far as subsistg to an underlease of, &c., *or*, " to the subsistg under leases or tenancies of the sd respective premes "] (*a*).

(*f*) See the L. P. Act, 1925, ss. 139, 141. As to merger, see *Re Fletcher*, [1917] 1 Ch. 339.

(*g*) For several leases say, " respective terms of —— & —— yrs," " respective leases," &c.

(*h*) Leaseholds for lives are converted by L. P. Act, 1925, s. 149 (6) into terms of ninety years determinable on notice after the death of the lessee.

Variation for assignment of part of premises held under the lease subject to apportioned rent.

(*a*) If the sale is of part only of the property in the lease, the rent having been apportioned on a former occasion, say :—

" SUBJT to the yrly rent of £——, being the apportioned pt payable in respt of the premes hby assned of the entire rent of £——, reserved by the sd lease as hrinbfe recited, & to the pformce & observce of the covts on the pt of the lessee & condons contd in the sd lease so far as the same relate to the premes hby assned, & subjt to such liability as is subsistg under the sd lease or orwise to the paymt of the remaing portion of the sd entire rent & to the pformce & observce of the sd covts in respt of the remaing portion of the premes comprised in the sd lease, but with the benefit of all the covts, powers, & provons [implied by] *or* contd in the hrinbfe recited assnmt of, &c., or orwise subsistg, for securg the paymt of such remaing portn of the sd entire rent & the

17. To HOLD, &c., *as in* f. **16**, but discharged from all ppal moys & intt secd by & from all claims & demands under the hrinbfe recited [sd] [legal charge] mtge of, &c. The same free from a specified incumbrance.

18. To HOLD the same Unto the sd *pchaser* for all the residue now unexpired of the sd term of —— yrs granted, &c., *as in* f. **16**, but free from all right or equity of redmon & from all claims & demands under the hrinbfe recited [legal charge] mtge. The same free from equity of redemption (*b*).

19. To HOLD all such pts of the sd ppty as are of freehd tenure UNTO the sd, *pchaser*, in fee simple [subjt, &c.], & To HOLD all such pts of the sd ppty as are of leasehd tenure UNTO the sd, *pchaser*, henceforth for all, &c., *as in* f. **16**. Freehold and leaseholds combined.

20. To HOLD the same UNTO the sd, *trees*, &c., *as in* f. **16**, upon the trusts, &c., *as in* f. **13**, *or* f. **14**. Leaseholds upon trusts of settlement or will.

21. To HOLD the same UNTO the sd *ptners*, in fee simple [*if leasehds* for residue of term, &c., f. **16**] UPON trust to sell the same & to stand possed of the proceeds of such sale after paymt of the costs throf & also of the rents & profits of the ppty hby assured upon the trusts & with & subject to the powers & Freeholds or leaseholds as partnership property (*c*).

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pformce & observce of the sd covts & condons in relation to such remaining portion of the sd premes, & for indemnifying the sd *vendor*, & his successors in title in respt *or* " for indemnity in respt, etc.," of such remaining portion of the sd entire rent & against any breach of the sd last mentd covts & condons.

(*b*) See L. P. Act, 1925, s. 89. Except where the mortgage term does not comprise the whole of the land included in the leasehold reversion and the rent has not been legally apportioned (sub-s. 6) the mortgagee selling under his statutory or express power will convey the leasehold reversion (sub-s. 1).

In the excepted case, if the mortgagee has taken a power of attorney from the mortgagor to enable him to sell and convey the leasehold reversion in the form given in vol. 2, Prec. IV., p. 89, the same result will follow. Where, however, the mortgage was by demise executed before 1926 of part only of the leasehold reversion containing the usual declaration of trust of the reversion, the statutory power of sale will extend only to the mortgage term, and the *habendum* will run as formerly " for all the residue now unexpd of the sd term of ——yrs less —— days grtd by the recited [sd] mtge, & all such este or intt in the reversion reserved by the sd mtge of the sd term of —— yrs grtd by the sd lease of, &c., as the sd A. is entitled to or has power to assign free, &c.," as in the text.

(*c*) Where property is conveyed to partners as part of their partnership property, and in all cases where property is conveyed in trust for sale to several persons by whom the purchase money has been subscribed with a view to the retention of the property unsold, powers of mortgaging, leasing, and otherwise dealing with the property as the trustees for the time being

provns applicable thrto as pt of their ptnp ppty, *or* "the ptnp ppty of the sd firm."

Proviso restricting implied grant of light and air.

22. To HOLD, &c., *as in* f. **2**, subjt to the provon & declaron next hrinar contd, that is to say, Provd always & it is hby declared that the sd, *pchaser*, & his successors in title, shl not be entitled to any right of light or air wch wd in any mner diminish or interfere with the free & unrestricted user of any adjoing ppty now belongg to the sd *vendor*, either for bldg or any other ppose, & the assurce hrinbfe contd shl not be deemed or construed to imply the grt of any such right.

Personalty.

23. To HOLD the same UNTO the sd, *pchaser*, absolutely.

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may think proper should be inserted in the conveyance. *Cf.* the forms, *post*, pp. 621, 624.

As to the power which a surviving partner had before 1926 to mortgage or sell real estate, for the purpose of winding up or paying a debt of the partnership: *Re Bourne*, [1906] 2 Ch. at p. 433.

COVENANTS FOR TITLE (*a*).

PRELIMINARY NOTE.

Running with the land.

The benefit of covenants for title pass at common law to the assigns of the land, see Sugden V. & P., 14th ed., 577, and the cases there cited.

Implied covenants for title under the C. Act, 1881.

The L. P. Act, 1925, s. 76, replacing s. 7 of the Conv. Act, 1881, contains, by reference to the second schedule of the Act, provisions whereby a conveyance, including in that expression any assurance of any property by any instrument, except a will (s. 205 (1) (ii)), not being a demise by way of lease at a rent (s. 76 (5)), may, by inserting the appropriate words, be made to imply, in the case of a conveyance for value, whether by way of sale, mortgage, settlement or otherwise, the ordinary covenants for title and further assurance; or in the case of a conveyance, whether for value or not, by a trustee or mortgagee, or other person in a fiduciary position the ordinary covenant against incumbrances; so as to render the insertion of express covenants unnecessary. The provisions relating to mortgages and settlements will be noticed under those headings. The following is the substance of those relating to conveyances on sale :—

By beneficial owner.

First, In a conveyance for value (other than a mortgage), where a person conveys and is expressed to convey as "beneficial owner," the Act implies the usual qualified covenants by him for title and further assurance as regards the subject matter expressed to be conveyed by him (Second Schedule, Part I.), and also, in a conveyance of freehold property subject to a rent or of leasehold property, a covenant that the lease or grant creating the term or estate for which the land is held is valid, and that the rent has been paid and the covenants performed (*ibid.*, Part II.).

To whose acts the covenants extend.

The general effect of these provisions stated shortly, is that the liability under the covenants extends to the acts of every ancestor, testator or settlor under whom the conveying party derives title since the last conveyance for value (not being a marriage settlement), and to the acts of persons claiming under the conveying party or any such ancestor, testator or settlor (as to which see *David* v. *Sabin*, [1893] 1 Ch. 523, discussed 37 Sol. J. 400), and to the acts of any person conveying by direction of the conveying party. The fact that a defect in the title appears in the conveyance or is otherwise known to the purchaser does not alter the effect of the covenants for title: *Page* v. *M. Rly. Co.*, [1894] 1 Ch. 11; *G. W. Rly. Co.* v. *Fisher*, [1905] 1 Ch. 316; see 53 Sol. J., pp. 174, 195. The exception as to marriage settlements was no doubt inserted on the ground that such a settlement may not contain full covenants for title; see (Second Schedule, Part I.); Elph. Introd., 7th ed., 108.

As to whether an act done by the covenantor in respect of an adjacent property, acquired after the date of the conveyance and through an independent title, is a breach of that part of the covenant for title relating to quiet enjoyment, see *Davis* v. *Town Properties, &c., Corpn., Ltd.*, [1903] 1 Ch. 707; *Jones* v. *Consolidated Anthracite Collieries*, [1916] 1 K. B. 123, 126, 137; *Harmer* v. *Jumbil, &c., Ltd.*, [1921] 1 Ch. 200, 213.

Damages.

(*a*) As to the measure of damages on breach of covenants for title, see *Turner* v. *Moon*, [1901] 2 Ch. 825; discussed, 46 Sol. J. 279; *G. W. Rly. Co.* v. *Fisher*, [1905] 1 Ch. 316; *Eastwood* v. *Ashton*, [1913] 2 Ch. 39; affd., [1915] A. C. 900.

By fiduciary owner.

Secondly, In any conveyance by a person who conveys and is expressed to convey as "trustee" or "mortgagee," or as "personal representative of a deceased person," or as "committee of a lunatic," or as a "receiver of a defective," or "under an order of the Court," the Act implies the usual qualified covenant by him (as to his own acts, &c., only), against incumbrances, as regards the subject matter expressed to be conveyed by him (L. P. Act, Second Schedule, Part VI.). See *Wise* v. *Whitburn*, [1924] 1 Ch. 460.

Voluntary conveyance.

In a voluntary conveyance no covenant would be implied by the grantor conveying "as beneficial owner," as those words only raise covenants in a conveyance for value (see above); but if he conveys "as settlor," a limited covenant for further assurance would be implied. As to the effect of such a covenant, see Vol. 2, "SETTLEMENTS (PERSONAL)," INTRODUCTORY CLAUSES, f. 1, note. The full covenants might be implied by express words incorporating them; but it is not usual to insert them in such a case.

Extent of covenants.

The statutory covenants extend to the whole fee simple or other estate or interest expressed to be conveyed by the implied covenantor, whatever his actual estate or interest may be, or may appear to be on the face of the conveyance. Hence the importance, to the purchaser, of inserting the statutory words of limitation "in fee simple" (see Preliminary Note, *ante*, p. 439), and, to the vendor, of qualifying the grant by reference to any incumbrance created by him or by any one through whom he derives title otherwise than by purchase for value. The implied covenants may, however, be varied or extended by deed (s. 76, subs. 7); and any defect in title or incumbrance to which the implied covenants are not intended to extend, may be guarded against either by correctly describing the title conveyed or by inserting in the conveyance an express provision restricting the operation of the implied covenants: see *Page* v. *M. Rly. Co.*, [1894] 1 Ch. 11 (defective title under a will); *Re Tyrell*, 82 L. T. 675 (reversionary lease affecting the property); *Turner* v. *Moon*, [1901] 2 Ch. 825, and *G. W. Rly. Co.* v. *Fisher*, [1905] 1 Ch. 316 (rights of way over the property); *Stait* v. *Fenner*, [1912] 2 Ch. 504 (where the legal estate was outstanding); and *Eastwood* v. *Ashton*, [1915] A. C. 900.

By several parties.

Where more than one person joins in the conveyance, the covenant implied in the case of each of them conveying "as beneficial owner" extends to the subject matter or share of subject matter *expressed* to be conveyed by him (s. 76, sub-s. 1).

By directing party.

The Act also provides for the case of a person who joins in the conveyance merely as a directing party, by enacting (s. 76, sub-s. 2) that if one person conveys by the direction of another who is 'expressed to direct as beneficial owner," the same covenants by the latter shall be implied as if he had conveyed and been expressed to convey "as beneficial owner" the subject matter conveyed by his direction. A person who is merely a consenting party and has no power to direct the conveyance, may be made to do so for the purpose only of implying covenants for title; or he may for this purpose convey, by way of confirmation, as beneficial owner; or the statutory covenants may be incorporated by express words.

Consenting party.

By a married woman.

By husband and wife.

The case of husband and wife joining in the conveyance of the property of the latter is provided for (see s. 76, sub-s. 3) as follows: If the wife conveys "as beneficial owner," and the husband also conveys "as beneficial owner," then the wife is to be deemed to convey and to be expressed to convey by direction of the husband as beneficial owner, and in addition to the covenant implied on the part of the husband there is also to be implied

a covenant by him in the same terms as the covenant implied by the wife, the effect being that three covenants are implied: *first*, by the wife, binding her separate estate as to the acts of herself and persons under whom she claims; *secondly*, by the husband, as to the acts of himself and the person under whom he claims; and *thirdly*, by the husband, as to the acts of the wife, and persons under whom she claims.

Benefit of implied covenants.

The implied covenants are in every case with the person to whom the conveyance is made, or with the persons jointly if more than one to whom the conveyance is made as joint tenants, or with each of the persons if more than one to whom the conveyance is made (when the law permits) as tenants in common (sub-s. 1); and the benefit of them goes with the estate of the implied covenantee, and (by sub-s. 6) is enforceable by every person in whom such estate is wholly or partially vested, and where the covenant is with two or more, the benefit is to survive (s. 80).

Construction.

By s. 83, in the construction of an implied covenant words importing the singular may be read plural, and *vice versâ*, and the masculine gender the feminine.

Application of the Act.

The enactment applies to every instrument of assurance except a will, not being a demise by way of lease at a rent (sub-s. 5), of any kind of property, real or personal, including a charge, assent, vesting declaration vesting instrument, disclaimer and release (see the definition of "conveyance" in s. 205 (1) (ii).

Adoption of Act.

The statutory covenants are sufficiently in accordance with the previously established practice, to be adopted, and they are practically universally relied on in all ordinary cases; but occasionally it may be necessary to vary or extend them, in which case they will operate, as varied or extended in all respects as if the variations or extensions were directed to be implied by the Act.

As to the protection afforded to solicitors and trustees adopting the Act, see L. P. Act, 1925, s. 182.

Use of particular words is essential.

In order to raise the proper statutory covenants, it is essential that the conveying party should expressly convey or direct the conveyance "as beneficial owner," or convey as "trustee" or "mortgagee," &c., as the case may be. Without these or other words mentioned in the Act no covenant will be implied, although the fact that the conveying party is beneficial owner or trustee, &c., may appear from the recitals or otherwise (see s. 76, sub-s. 4).

As to word "convey."

It must not be supposed that because the word "convey" is used in this section, and in the forms in the 5th schedule to the Act, it is therefore necessary to use that particular word to imply the covenants. The word "convey" in the Act includes all the ordinary modes of conveyance (see s. 205 (1), and *ante*, p. 441, note); and it is quite clear that the ordinary operative words of conveyance will suffice, both to pass the estate and raise the covenants for title.

"Grant" under L. C. C. Act, 1845.

Reference may here be made to the Lands C. C. Act, 1845, s. 132, by which the word "grant" in a conveyance by a railway or other company under that Act, implies the usual covenants for title. See also, Queen Anne's Bounty Act, 1838, s. 22, and the Acts referred to in Elph. Introd., 7th ed., 113.

As to the construction of covenants for title see Norton on Deeds, 547 *et seq.*

The common forms of express covenants for title, &c., can scarcely now be required, and are accordingly omitted in the present edition.

FORMS IMPLYING OR VARYING STATUTORY COVENANTS (*a*).

Absolute owner.

1. The sd, *vendor,* as benefl owner, hby grts [*or,* assns, appts, *or as the case may be*], &c.

Wife (*b*).

2. The sd, *wife,* as benefl owner [with the concurrce of the sd, *husbd*] hby, &c.

Tenants in common and joint tenants.

(*a*) Land cannot now be held in common in possession either at law or in equity (L. P. Act, 1925, s. 34). A legal estate in land may be held in joint tenancy, but in that case must be subject to a trust for sale (L. P. Act, 1925, s. 35) under which title must be made (s. 42); unless it is settled land. It follows that neither joint and several covenants by joint tenants as beneficial owners of land, nor covenants by tenants in common as beneficial owners of land, or covenants by tenants in common as beneficial owners as to their respective shares in the proceeds of the sale of land, can now be required. Persons may be entitled beneficially as joint tenants or in undivided shares as tenants in common to the proceeds of sale of land or to personal property of any description, except leaseholds held for a term of years absolute; but the interests of persons beneficially entitled to the proceeds of sale of land will be over-reached on sale of the land by the conveyance of the estate owners under the trust for sale applicable in the circumstances, and the persons so interested cannot be required to join in the conveyance for the purpose of covenanting for title.

Where on the sale of personal property joint tenants are required to enter into joint and several covenants for title, the operative words will run as follows: "the sd, *vendors,* as benefl owners do & each of them as benefl owner as to his or her one equal share in the sd premes doth hby assign, &c." Tenants in common of personal property will covenant in respect of their respective shares as follows: "the sd A as benefl owner as to the —— equal —— share[s] in the sd —— to wch he is entitled as hrinbfe appearing and the sd B as to the —— equal —— share[s] in the same —— to wch he is entitled as hrinbfe appearing hrby assign, &c."

Settled land.

Every conveyance on sale of settled land must now be made by the tenant for life or statutory owners (see L' P. Act, 1925, s. 42); and sales by tenant for life and remainderman incorporating limited covenants in respect of their successive interests which were formerly sometimes effected will not in future occur.

(*b*) This implies the usual covenants for title, &c., by the wife as to the acts of herself and her ancestors, &c., binding her separate estate, but no covenant by the husband. If the wife has power to dispose of the property as a *feme sole* under the M. W. P. Act, 1882, or otherwise, the husband's concurrence is of course unnecessary, unless it is desired to obtain covenants from him, as in the next form.

3. The sd, *wife,* as benefl owner, hby grts, & the sd, *husbd,* as benefl owner, hby grts, & confirms, &c. Husband and wife (*c*).

4. The sd —— as trees [of the hrinbfe recited settlemt, *or,* " will," *or,* " so constituted as afsd,"] *or,* " as mtgees," *or,* " as psonal repves of the sd X., deced," *or,* " as committee [receiver] of the sd X.," *or,* " under the hrinbfe recited order of, &c.," hby grt[s], &c. Trustees mortgagees, &c. (*d*).

5. The sd — — as trees, *or as the case may be, see precedg form,* by the direction of the sd Z., directg as benefl owner, hby grt, [& the sd Z. hby conveys & confirms,] &c. Directing party (*e*).

6. The sd —— as trees, &c., *or as the case may be, see* f. **4**, with the consent, *or,* " at the reqt," of the sd Z. [& for the ppose only of implying covts by the sd Z. for title & further assurce by the direction also of the sd Z., directg as benefl owner], hby grt, & the sd Z. [as benefl owner], hby conveys & confirms, &c. Consenting party (*f*).

7. And it is hby declared that the same covts shl be deemed to be implied by these psnts on the pt of the sd Z. for the title to & further assurce of the premes hby assured, as if (*g*) he had assured & had been expressed to assure the same as benefl owner [& the other pties makg or concurrg in such assurce had been expressed so to do by his direction]. Clause incorporating statutory covenants for title.

(*c*) As to what covenants this implies, see *ante,* p. 508. See also the form of conveyance by a married woman of real estate acquired while unmarried before 1883, *post,* Prec. XLII., and note thereto.

(*d*) This implies a covenant against incumbrances by each of the conveying parties as to his own acts, &c., only. There is of course no objection to referring to the settlement or other instrument under which the trust arises.

(*e*) This implies the same covenant as the preceding form, and in addition the usual covenants for title, &c., by Z., extending to the acts of the trustees. No additional covenants are implied by making Z. also convey as " beneficial owner : " see *ante,* p. 508.

(*f*) This implies the same covenants as the last form, if the words of direction (which are bracketed) are inserted ; or in lieu of this, Z. may be made to convey by way of confirmation " as beneficial owner," by inserting those words in the subsequent part of the clause, which would imply the same covenants by Z. except that they would not then extend to the acts of the trustees, and the covenant for right to convey would be faulty. The words of direction, unless qualified as above, may in this case be objectionable, and if the sale is by trustees, might imply a breach of trust, as they might be doing wrong in conveying by the direction of Z. If preferred the statutory covenants may be incorporated in this case by a separate clause : see *infra,* f. 7.

(*g*) If the conveyance is voluntary, insert here, " this convce had been made for value, &c."

The same against incumbrances.

8. And it is hby declared that the same covt shl be deemed to be implied by these psnts on the pt of the sd Z., as if he had assured & had been expressed to assure the premes hby assured as tree.

Proviso restricting liability of directing party under statutory covenants.

9. Provd always, & it is hby declared that the covts of the sd A., wch are implied by reason of the sd B. being expressed to convey by his direction as benefl owner, shl not extend so as to render him liable in respt of the acts or defaults of the sd B., or of any pson claimg under him.

Proviso restricting liability on sale of leaseholds subject to broken covenants.

10. Provd always, & it is hby agreed, that the covts wch are implied by reason of the sd A hby assigning & being expressed to assn as benefl owner, shl not be deemed to imply that either of the covts on the pt of the lessee contained in the recited lease for painting or repairs to be executed upon the premes has been pformed.

On surrender of lease.

11. Provd always, &c., *as in f.* **10**, shl not be deemed to include those mentd in the Law of Pppty Act, 1925, s. 76, sub-s. (1), clause B.

COVENANTS FOR PRODUCTION OF DEEDS.

PRELIMINARY NOTE.

Statutory covenants for production and custody of title deeds.

The L. P. Act, 1925, s. 64,(replacing the C. Act, 1881, s. 9), contains provisions intended to obviate the insertion of the full covenants for production and safe custody of documents by substituting very short forms of :—(1.) An acknowledgment of the right to production and delivery of copies ; and, (2.) An undertaking for safe custody ; to which an operation is given similar to that of the old form of covenant by trustees or mortgagees, in respect of the personal liability ceasing on the covenantor parting with the deeds, but the obligation attaching on the deeds against the holder for the time being ; whereas the liability under the old form of covenant of a beneficial owner continues after he parts with the deeds, unless there is a proviso for cesser of the liability on his procuring a substituted covenant, and this is procured ; which, however, it seldom was on account of the trouble and expense. The Act has led to an assimilation of the practice in the two cases.

Operation of statutory covenant in case of trustees and mortgagees.

The statutory covenant differs from the old trustees' and mortgagees' covenant in this, that the latter imposes a liability only while the covenantors have the " actual custody " of the deeds, but, under the statute, they are liable while having the " custody or control " of them ; this is of no importance as regards the covenant for production, but it renders the statutory undertaking for safe custody more onerous than the old express covenant by making the covenantors liable for the loss of the deeds through the defaults of their agent, as well as their own personal defaults ; and the undertaking should not be given by trustees or mortgagees or other fiduciary owners. A liability of this kind may attach to deeds delivered to trustees or mortgagees by reason of an undertaking for safe custody given by a previous possessor, but this cannot be avoided. A mortgagee is liable to give an indemnity to, and, upon redemption, to pay compensation to the mortgagor for the loss of the deeds ; see *Hornby* v. *Matcham*, 16 Sim. 325 ; *Brown* v. *Sewell*, 11 Hare, 49 ; *James* v. *Rumsey*, 11 Ch. D. 398 ; where a form of indemnity is given ; *Caldwell* v. *Matthews*, 62 L. T. 799 ; *Gilligan & Nugent* v. *National Bank*, [1901] 2 Ir. R. 513 ; but a mortgagee whose mortgage is surrendered or otherwise extinguished is not liable for having delivered documents of title in his possession to the person not having the best right thereto, unless he had notice of the right or claim of a person having a better right, whether by virtue of a right to require a surrender or reconveyance or otherwise (L. P. Act, 1925, s. 96 (2). A mortgagee is now bound to produce the deeds to any person entitled to redeem the mortgage (L. P. Act, 1925, ss. 96 (1), 205 (1) (xvi.).

Devolution of benefit of acknowledgment

The benefit of an acknowledgment (by s. 64 (3)) goes to any person (other than a lessee at a rent), claiming under the person to whom it is given. There is no corresponding provision as to the devolution of the benefit of an undertaking for safe custody ; but it would no doubt by implication be held to go with the acknowledgment.

and undertaking.

The Act applies whether the documents relate to real or personal estate.

The statutory operation of the acknowledgment or undertaking is to be subject to any express provisions contained in it (sub-ss. 12 and 13); it may therefore be modified.

Form of acknowledgment.

It is important to notice that sub-s. 1 appears to require that the acknowledgment, in order to be effectual, should be of the right not only to production, but also to delivery of copies, so that without the latter words it would have no statutory effect.

Acknowledgment does not include undertaking.

A mere acknowledgment does not include a covenant for safe custody (sub-s. 6): if this is intended, an undertaking must also be given under sub-s. 9.

The documents must be in the possession of the covenantor.

The statutory covenant only applies to documents "of which the covenantor retains possession" (see sub-ss. 1 and 9); the fact that he retains possession should therefore be stated in the acknowledgment or introductory recital. Of course the retaining need be only momentary. Occasionally a vendor covenants for production of documents in the hands of third parties, who cannot or will not give a covenant or acknowledgment, *e.g.*, mortgagees (see *post*, p. 516, note (*a*)); in that case an express covenant in the old form must be given, as the statute would not apply, even though the documents should afterwards come into the possession of the vendor: *Re Pursell & Deakin*, [1893] W. N. 152; the doctrine of estoppel not being applicable to such a case. The statutory form of acknowledgment and undertaking if given in such a case would operate according to its tenor independently of the statute, and would probably create a more onerous liability than the ordinary express or statutory covenant.

What deeds should be included in acknowledgment.

Where a purchaser is buying the whole of the vendor's estate, he is entitled to have all the deeds in the vendor's possession handed over, *Buckhurst's Case*, 1 Co. Rep. 1; but where he is buying only a part, he is entitled to include in the acknowledgment of the right to production only those abstracted (so decided by Stirling, J., in chambers, in *Re Guest & Worth*, on 20th May, 1889, and see *Cooper* v. *Emery*, 1 Ph. 388). Otherwise the acknowledgment might lead to the disclosure of defects in the vendor's title affecting the other property retained by him, which it may have been the object of the condition limiting the commencement of the title to prevent. Mere copies of documents (whether plain, or attested, or office), are not included; nor was it the former practice to include probates of wills or letters of administration, but these, having regard to the provision for the endorsement of assents thereon contained in s. 36 of the Admn of Estes Act, 1925, must now be included. As to documents of record generally, see Dart, 7th ed., 156, 696. As to the right of the vendor to retain documents relating to land retained by him, see *ante*, p. 240.

Stamp.

An acknowledgment or undertaking need not be under seal; if under hand it will only require a 6*d.* agreement stamp.

Expenses.

As to expenses, see L. P. Act, 1925, s. 45 (4), Dart, 7th ed., 157.

Right of purchaser to express covenant.

An acknowledgment or undertaking under the Act is to satisfy any liability to give a covenant for production or safe custody respectively (s. 64, sub-ss. 8 and 11); so that a purchaser cannot, as it seems, insist on the ordinary express covenant, although stipulated for in the contract. But this provision cannot apply where the deeds are not in the covenantor's custody, as the acknowledgment would not in that case have the intended statutory effect. See a form of covenant by a vendor for safe custody of documents in the possession of a mortgagee, *infra*, p. 516).

Except in the case mentioned above, and where the property is situate abroad, the statutory provisions on this subject entirely supersede the necessity for the insertion of the full covenants for production, &c., and their employment is now practically universal in the case of absolute owners as well as trustees and mortgagees (with the omission in the case of the latter of the undertaking for safe custody). The full forms of such covenants which were inserted for reference in the last edition of this work (see 11th ed., vol. 1, pp. 535 *et seg.*) are therefore omitted in the present edition. Express covenant now unnecessary.

Where an application is made to register land the registrar can compel the production of any muniments of title to the land to the production of which the applicant is entitled: L. P. Act, 1925, s. 15. Registered land.

The registrar can compel the production of the land certificate, or certificate of charge prior to making an entry in the register to which it relates: L. R. Act, 1925, s. 64.

I.

Statutory Acknowledgment *by a* Vendor *to a* Purchaser (*a*) *of the right to* Production *of* Muniments, *with* Undertaking *for* Safe Custody.

And the sd, *vendor*, hby acknowes the right of the sd, *pchaser*, to the production of the documts mentd in the —— schdle hto (the posson of wch is retained (*b*) by the sd, *vendor*) & to delivery (*c*) of copies throf; And hby (*d*) undertakes with the sd, *pchaser*, for the safe custody of the same documts. Acknowledgment of right to production. Undertaking for safe custody.

II.

Statutory Acknowledgment *of the right to* Production *of* Separate Sets *of* Deeds one set *being in the possession of the* Vendor *& the* other Set *in the possession of* Mortgagees, *with* Undertaking *for* Safe Custody (*e*).

The sd A., as to the documts specified in the first schdle hto, the posson of wch is retained by him, & the sd C. & D. (*mtgees*), as to the documts specified in the second schdle hto, the posson Acknowledgment of right to production.

(*a*) The only alteration for the case of several vendors or several purchasers will be the substitution of the plural for the singular.

(*b*) See Preliminary Note, *ante*, p. 514.

(*c*) See *ib.*, *ante*, p. 514.

(*d*) In the case of trustees or mortgagees or other fiduciary vendors, the undertaking for safe custody should be omitted.

(*e*) See Preliminary Note, *ante*, p. 513.

of wch is retained by them, hby resply acknowe the right of the sd, *pchaser*, to the production of the docts specified in the sd schdles hto & to delivery of copies throf: And the sd A., as to the documts in the sd first schdle, undertakes with the sd, *pchaser*, for the safe custody of the documts thrin mentd.

Undertaking for safe custody (*a*).

III.

Addition *to express or statutory* Covenant for Production *where the deeds are to be* Delivered *to the* Purchaser *as soon as the* Other Property *to which they relate has been sold.*

And the sd *vendor* hby covts with the sd *pchaser*, that when all the other ppty to wch the sd documts resply relate shl have been sold & conveyed to the pchaser or pchasers throf, such respective munimts & writgs shl at the cost of the sd, *pchaser*, or his successors in title, & upon his or their at his or their own cost executing & deliverg to such pchaser or respective pchasers a pper acknowmt for the production & furnishg copies & for undertakg safe custody throf, be delivered to the sd, *pchaser*, or his successors in title.

IV.

Covenant *by a* Vendor *for* Safe Custody *of* Documents *in* Possession *of a* Mortgagee.

And the sd, *vendor*, doth hby covt with the sd, *pchaser*, that the sd, *mtgee*, & his successors in title, will keep the sd documts safe, whole, & unobliterated (fire or other inevitable accident only excepted), Provd that this covt shl become void if at any time hrafter the pson then havg posson of the sd documts shl give to the *pchaser*, or his successors in title, an undertakg for the safe custody throf.

(*a*) The undertaking for safe custody should not be given by C. & D.: see 1 Wolst. & Cherry's Conv. Stats., 11th ed., 240.

MISCELLANEOUS CLAUSES.

Clause extending statutory implied covenant for payment of rent and indemnity by purchaser(*a*).

1. And the sd, *pchaser*, hby charges the premes hby assigned *or* " the ppty hby assured " with the paymt of all moy wch may become payable by him under the covt on his pt implied in these presents by virtue of section 77 of the L. P. Act, 1925 (*b*).

Clause extending like covenant by vendor.

2. And the sd, *vendor*, hby charges such of the premes comprised in the recited lease *or* " such pt of the land affected by the sd rentcharge " as remain[s] vested in him with the paymt of all moy wch may become payable by him under the covt on his pt implied in these presents by virtue of section 77 of the L. P. Act, 1925.

(*a*) This and the following two forms may be required on the sale of leaseholds or of land subject to a rentcharge. Form 1 is adapted to an assignment of all or part only of the land comprised in a lease as well as to the assurance of all or part only of land affected by a rentcharge. Form 2 is applicable to an assignment of part of land comprised in a lease or to an assurance of part of land affected by a rentcharge where some part of the land demised or subject to the rentcharge remains vested in the vendor. Form 3 applies in the like case where the assignment or assurance is made by a settlor, trustees, mortgagees, personal representatives, the committee of a lunatic, or the receiver of a defective, or under an Order of the Court : L. P. Act, 1925, s. 77 (4).

The object of extending the statutory implied covenant by means of a charge as in f. 1 and 2 is to guard against the covenant becoming unenforceable by reason of the insolvency of the covenantor.

The charge is valid though not restricted as to perpetuities : L. P. Act, 1925, s. 162 (1).

(*b*) The implied statutory covenant for payment of rent and performance of the covenants of the lease is substantially the same as the covenant usually inserted in an assignment of leaseholds made before 1926. See 1 K. and E., 11th ed., p. 553. The covenant is merely a covenant for indemnity, and is not enforceable by injunction : *Harris* v. *Boots, etc., Co., Ltd.*, [1904] 2 Ch. 376. On the lessor recovering damages against the lessee for breach of covenant occurring while an assign, whether the original assign or an assign of his, is in possession, the lessee is, independently of the implied covenant, entitled to be indemnified by the assign : *Moule* v. *Garrett*, L. R. 7 Ex. 101 ; but not by an under-lessee : *Bonner* v. *Tottenham Benefit Building Soc.*, [1899] 1 Q. B. 161.

Where upon an assignment of leaseholds made before 1926, the assignor was himself under no liability in respect of the covenants in the lease, the purchaser was not bound to enter into any covenant for payment. Upon a sale under similar circumstances made after 1925, the statutory covenant will be implied, but this having regard to the nature of the covenant is of little or no consequence.

Clause incorporating statutory covenant by trustees, etc., for payment of rent and indemnity (*a*).

3. And it is hby agrd that the same covt shl be deemed to be implied by these presents on the pt of the sd, *vendors*, as by virtue of s. 77 of the L. P. Act, 1925, wd have been implied if they had assigned *or* " assured " & had been expressed to assign *or* " assure " the premes hby assigned *or* " assured " **as benefl owners.** [And the, *vendors*, hby chge, &c., *continue as in* f. **2**, saying, " under such implied covt. as afsd."]

Covenant by purchaser to pay and indemnify the vendor against mortgage debt subject to which the property is sold (*b*).

4. THE sd, *pchaser*, hby covts with the sd, *vendor*, that he the sd, *pchaser*, will pay to the sd, *mtgee*, on such paymt being lawfully demanded (*c*) the sd ppal sum of £—— so owing on the secy of the recited mtge *or* " legal charge " as afsd, & the intt now & henceforth to become due in respt throf, & will at all times keep the sd, *vendor*, effectually indemnified against the same & every pt throf, & all actions, proceedings, costs, charges, claims, & demands whatsr in respt throf.

(*a*) Upon the sale of part of the land comprised in a lease at a rent apportioned without the consent of the lessor, the usual covenants for payment by the vendor of the apportioned part of the rent to be borne by him and for the performance and observance by him of the covenants and conditions of the lease, so far as they respectively relate to such part of the demised premises as is retained by him, will be implied by virtue of s. 77 of the L. P. Act, 1925, if the vendor conveys or is expressed to convey " as beneficial owner," and may, by express reference to the section (sub-s. 4), be implied with or without variation in a conveyance, whether or not for valuable consideration by a person who conveys or is expressed to convey as settlor, trustee, mortgagee, personal representative, committee of a lunatic or receiver of a defective, or under an order of the Court. See this section discussed, *ante*, p. 439, preliminary note to " Conveyances."

Similar provision is made by the same section for the incorporation of implied covenants by the vendor of part of land affected by a rentcharge. See *ante*, pp. 379, 380.

(*b*) This is a personal covenant and cannot be assigned: *Rendall* v. *Morphew*, 84 L. J. Ch. 517; and see *British Union &c., Co.* v. *Rawson*, [1916] 2 Ch. 152. As to the equitable right of the vendor to indemnity, apart from contract, see *Waring* v. *Ward*, 7 Ves. 332, 337; *Bridgman* v. *Daw*, 40 W. R. 253. The implication founded on conscience, of an unqualified liability on the part of the purchaser, is negatived in all cases where there is an express qualified indemnity, or where the circumstances and nature of the transaction are otherwise of a nature to rebut the implication: *Mills* v. *United Counties Bank, Ltd.*, [1912] 1 Ch. 231. As to the rights of the parties generally, in case of an assignment of property subject to a mortgage, see *Kinnaird* v. *Trollope*, 39 Ch. D. 636.

(*c*) The object of these words is to preclude the vendor from requiring the purchaser to pay off the mortgage so long as he is kept indemnified. This may, if preferred, be effected by adding the following provision at the end of the covenant:—

Vendor

" PROVD always that the sd, *vendor*, or his exs, or ads, shl not

5. The sd, *vendor*, hby covts with the sd, *pchaser*, that if any duty shl become payable in respt of the premes hby assured by reason of the death of the sd A., prior to the —— day of ——, 19—, then, he, the sd, *vendor*, will immediately thereupon pay & discharge the same & will at all times keep the sd, *pchaser*, & his succors in title, & also the premes hby assured effectually indemnified, &c., *as in last form*.

Covenant by vendor for payment of death duty (*a*).

6. The sd, *vendor*, hby covts with the sd, *pchaser*, that he will, when & as soon as the sum now payable for este duty in respt of the timber, trees & wood comprised in the premes hby assured shl have been ascertained, pay & discharge the same, & will at all times, &c., *as in* f. **4**, p. 518.

Covenant by vendor to pay estate duty in respect of timber, &c. (*b*).

7. The sd, *pchaser*, hby covts with the sd, *vendor*, with the object & intent of affording to the sd, *vendor*, & his succors in title, a full & sufft indemnity, but not further or orwise, that he the sd, *pchaser*, will at all times hrafter duly pform & observe the covts [by the sd, *vendor*], & restrictive provons in the sd deed of, &c., contd in relation to the premes hby assured, & will at all times keep the sd, *vendor*, & his succors in title, effectually indemnified against all actions, &c., *see* f. **4**, p. 518, in respt of the sd covts & restrictive provons or any of them.

Covenant by purchaser to indemnify vendor against restrictive covenants in former conveyance (*c*).

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be entitled to require the sd ppal sum & intt, or any pt throf to be pd off, if & so long as he & they shl be kept indemnified in respt throf as afsd."

not to require payment of debt if indemnified.

(*a*) The estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has attached and free from such charge) is accountable for all death duties which become leviable or payable in respect of his estate in the land: L. P. Act, 1925, s. 16 (2). Where, therefore, title is derived under a voluntary conveyance less than three years old, it is possible that the purchaser, having acquired the property within the three years' period, and before any duty has attached, may become accountable for duty by reason of the subsequent death of the donor within the three years' period.

A purchaser of a legal estate now takes free from any charge for duty which attached after 1925 and is not registered as a land charge: L. P. Act, 1925, s. 17. There are but few cases, therefore, in which a covenant by the vendor for payment of duty can now be required. Where duty has attached before 1926, but not having been assessed, cannot be paid immediately, the vendor should obtain a certificate of discharge under s. 16 (7) rather than cumber the conveyance with a covenant of a temporary nature.

(*b*) See *ante*, p. 311, note (*g*).

(*c*) See 2 Dav. Prec., 4th ed., pt. 1, p. 216; Dart, 7th ed., 579; Williams V. & P., 2nd ed., 667; *Re Poole & Clarke*, [1904] 2 Ch. 173; *Reckitt* v. *Cody*, [1920] 2 Ch. 452.

Covenant by purchaser to pay debts, on assignment of business.

8. The sd, *pchaser*, hby covts with the sd, *vendor*, that he the sd, *pchaser*, will in due course pay & discharge all the debts & liabilities of the sd business wch were subsistg on the —— day of —— 19—, or have since been incurred as appearg in the books of the sd business & wch now remain outstanding or undischarged, and will at all times hrafter effectually keep indemnified the sd, *vendor*, & his succors in title, against all such debts & liabilities as afsd, & all actions, proceedings, costs, damages, & expses in respt throf.

Covenant that life policy is subsisting.

9. That notwithstdg anything by him the sd, *vendor*, done, omitted, or knowingly suffered the sd policy is now a valid subsistg policy for the sd sum of £—— & for all bonuses & additions (if any), wch have been added thereto.

To enable purchaser to insure vendor's life.

10. That he, the sd, *vendor*, will at any time hrafter [durg the joint lives of himself & K.], at the request & cost (*d*) of the sd, *pchaser*, or his succors in title, appear at any life assurce office or offices in the county or city of London, or bfe the agent or agents of any such office or offices in the county where he, the sd, *vendor*, may happen to be resident & actually be, & then & there truly answer such questions & make such declarons as shl or may be asked or required touchg or concerng his age & state of health, & submit to medical examinon, & do all other necy acts in order to enable the sd, *pchaser*, or his succors in title, at his or their expse, to effect a poly or pols of assurces on the life of him, the sd, *vendor*.

Not to vitiate policy.

11. That he, the sd, *vendor*, will not at any time do or knowgly omit or suffer anything (*e*) [other than the omission to pay the premiums wch are to be pd by the sd, *pchaser*, his exs, ads, or assns], whereby the sd poly [any poly wch may be effected as hrinbfe provd] may become void or voidable, or whereby the sd, *pchaser*, or his succors in title, may be prevented from receivg the moys thereby assured, or any bonus or addition thereto or any pt throf resply.

Variation where the policy is not yet effected.

To pay increased premiums if required.

12. That if the sd, *vendor*, shl at any time do or knowgly omit or suffer anything whereby any addonal premium or paymt shl become payable in respt of the sd poly, then he, the sd, *vendor*, will from time to time thrafter pay to the sd, *pchaser*,

(*d*) See also Vol. 2, p. 33, f. 7.

(*e*) See *Re Birkbeck, &c., Building Socy.*, [1913] 2 Ch. 34; *Cohen* v. *Popular Restaurants, Ltd.*, [1917] 1 K. B. 480, 482; *Re Farrow's Bank, Ltd.*, [1921] 2 Ch. 164.

or his succors in title, such sum or sums of moy as shl become payable as an addonal premium or paymt for keepg the sd poly on foot, one week at least bfe the first day on wch such addonal premium or paymt shl become payable to the assurce office in respt of such poly.

To give certain notices.

13. That he, the sd, *vendor*, will from time to time give to the sd, *pchaser*, or his succors in title, at least —— days' notice in writg of his intention to do, omit, or suffer anything whby such addonal premium or paymt as afsd will become payable, or to change his abode, & will forthwith, on being required so to do, give to him or them such informon as to his abode or intended change of abode as may be required, & that the exs or ads of the sd, *vendor*, shl within —— days after his death send informon throf to the sd, *pchaser*, or his succors in title, by letter sent through the post addressed to him or them at his or their usual or last known place of abode in England.

Of change of abode.

Right reserved to vendor to destroy access of light (*a*).

14. It is hby agrd & declared that the access & user of light from & over the adjoing ppty of the sd, *vendor*, to & for the land hby grted, & any dwelling-house erection or bldg for the time being erected & standing thron shl henceforth be enjoyed by the sd, *pchaser*, & his succors in title, under the consent hby given of the sd, *vendor*, & that the sd, *vendor*, or his succors in title, owners or occupiers of the adjoing ppty shl be at liberty witht let or hindrance by the sd, *pchaser*, or his succors in title, at any time hrafter to interfere with or destroy such access or user of light by making erections or bldgs or alterg existng bldgs on such adjoing land witht any formal revocation of the consent hby given.

Restrictive covenant by purchaser (*b*).

15. That he the sd, *pchaser*, & his succors in title, will at all times hrafter observe & pform the stipulons & regulons in relation to the lands & ppty hby assured wch are contained in the schdle hto.

(*a*) See *Bewley* v. *Atkinson*, 13 Ch. D. 283; *Greenhalgh* v. *Brindley*, [1901] 2 Ch. 324; *Smith* v. *Colbourne*, [1914] 2 Ch. 533. Cf. the form of agreement, *ante*, pp. 63 *et seq.*, and see the form of condition and note, *ante*, p. 353.

(*b*) For forms of commencement of restrictive covenants see "Covenants, Formal Parts of, *post*, p. 710. It must be remembered that the formal part of a restrictive covenant must be varied in accordance with the intention of the parties, which may be (1) that the burden and benefit of the covenant shall run with the land of the purchaser and vendor respectively, (2) that the burden shall run but that the benefit shall not by the conveyance be annexed to particular land of the vendor, or

Purchaser to have no right to enforce covenants (*c*).

16. The sd, *pchaser*, or his succors in title, shl not have the benefit of or the right to enforce, or have enforced, or to prevent the release or modificon of any covt htofore entered into by any pchaser of the lands coloured —— on the sd plan or of any pt throf.

Power of re-entry in conveyance in fee on breach of covenant (*d*).

17. Provided always that the, *vendor*, & his succors in title shall have the right, if at any time [during the life of the survor of the issue now living of His late Majesty King Edward VII. & twenty-one yrs after the death of such survor (*d*)], the sd, *pchaser*, or his succors in title shl, in breach of the covt by the sd, *pchaser*, hrin contained, make default in pforming any of the stipulons involving the paymt

(3) that both burden and benefit shall run, but that the purchaser shall not remain personally liable for breach of covenant after he has parted with the property. As to the law relating to covenants running with the land, see *ante*, pp. 354 *et seq.*

As to the registration of restrictive covenants, see *ante*, p. 274, note (*c*). With respect to any instrument or matter required or authorised to be registered under the L. C. Act, 1925 (see as to restrictive covenants, s. 10 (1), Class D.), registration under that Act is by the L. P. Act, 1925, s. 198, to be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force. A covenant, therefore, such as formerly was sometimes given by a purchaser (see 1 K. and E., 11th ed., p. 559), in a conveyance imposing restrictive covenants, to give express notice to the covenants to any person, whether purchaser, lessee, or grantee to whom he might subsequently dispose of the property, cannot now be required.

(*c*) This is very unusual.

(*d*) Contrary to the rule established in *Re Hollis Hospital*, [1899] 2 Ch. 540, and *Re Evans*, [1920] 2 Ch. 469, a right of entry affecting a legal estate may now be made exercisable by any person and the persons deriving title under him: L. P. Act, 1925, s. 4 (3). If the right is annexed to a legal rent-charge it is a legal right (s. 1 (2)), and need not be restricted as to perpetuity. If, on the other hand, it is not so annexed, it is an equitable interest, and unless it falls within one of the exceptions mentioned in L. P. Act, 1925, s. 162 (1), can only be made exercisable within the period allowed by the rule relating to perpetuities: s. 4 (3).

The clause in the text is intended to be used in conveyances on sale of building plots in consideration of gross sums, and the right of entry being made exercisable on breach of covenants of a continuing nature, is limited so as not to offend against the rule.

Where the conveyance is made in consideration of a legal rent-charge, the clause, conferring in that case a legal right of entry, would properly be framed as a reservation. L. P. Act, 1925, s. 65 (1).

A right of entry reserved for building purposes in connection with adjoining land, or for drainage, etc., under the land conveyed may be reserved in perpetuity: L. P. Act, 1925, s. 162 (1) (*d*) (iii) and (iv).

of moy on his or their pt to be pformed, at any time thrafter within the afsd period, to enter into & upon the premes hby assured or any pt throf, & to execute thron such works as may be requisite specifically to perform such stipulons [including the pulling down of houses, bldgs or other erections] & during such period to remain in posson & take the rents & profits throf until such stipulations shl have been pformed & the breach of covt made good, & until the sd, *pchaser*, or his succors in title, shal have pd to the sd, *vendor*, or his succors in title, all costs, charges, & expses pperly incurred by him or them in or about the executn of any such works as afsd or occasd by any such breach of covt as afsd, togr with intt thron at the rate of £5 p.c. p.a. or until the same shl have been satisfied out of the rents & profits of the premes: PROVD NEVERTHELESS that the right of entry & other powers & remedies hby reserved shl not be exercised or put into force by the sd, *vendor*, or his succors in title, unless & until he or they shl have given to the sd, *pchaser*, or his succors in title, or left upon the premes hby assured, notice in writg to make good such default, & all costs, damages, & expses incurred as afsd, & the sd, *pchaser*, or his succors in title, shl fail so to do for one calr month after such notice. Proviso.

18. PROVD always & it is hby agrd that if the sd, *pchaser*, or his succors in title, shl in any wise make default in erecting or completing in accordce with the covt by the pchaser in that behalf hrinbfe contd & within the time or times resply hrinbfe specified the sd bldgs or any of them so to be erected & completed as afsd, & shl continue in default for the space of —— months after notice in writing to make good the same shl have been given or sent by post in a registered letter to him or them or left upon the premes hby assured by or on behalf of the vendor, or his succors in title, such notice to be given, sent by post, or left as afsd, not later than —— months after the default specified thrin, then & in such case it shl be lawful for the vendor or his succors in title, at any time within —— months Absolute power of re-entry on breach of covenant to build (*a*).

(*a*) See the preceding note. It is assumed that the covenant to build which the right of entry is here intended to secure is one which must be broken, if at all, within the period allowed by the rule relating to perpetuities.

If and when the vendor becomes entitled to have the legal estate vested in him by reason of the equitable right taking effect, the estate owner for the time being will be bound to make a conveyance to him: L. P. Act, 1925, s. 3 (3).

after the default made & continued as afsd & notwithstdg any actual or constructive waiver of any previous cause or right of re-entry, to enter upon the premes hby assured or any pt throf in the name of the whole, and thenceforth to hold and enjoy the same as if these presents had not been executed; and thereupon any conveyance requisite for revesting in the vendor or his successors-in-title the legal este in fee simple in the same premes shall forthwith be made and executed.

Power of attorney in assignment of chose in action (*b*).

19. Togr with power for the sd, *pchaser*, or his succors in title, at his or their own costs, in the name or names, & as the atty or attys of the sd, *vendor*, or his succors in title, or orwise, to demand, sue for, recover, & receive & give effectual rects & discharges for the sd —— & premes hby assned, or any pt or pts throf, & for any of such pposes to appt, a substitute or substitutes, the sd, *vendor*, & his succors in title, being kept indemnified by the sd, *pchaser*, or his succors in title, from all costs & expses occasd by such use of his or their name or names.

As to registration of land subject to restrictions (*c*).

20. It is hby agrd that no applicon shl be made for first registron under the L. R. Act, 1925, of a proptor or proptors of the ppty hby assured or any pt throf unless the same shl contain a statemt that the land in respt of wch the applicon shl be made is subjt to the restrictive covts & condons [hrinbfc] contd in the schdle hto or unless provons shl be made accordg to the law in force at the time when such applon shl be made for such entry on the Register as shl operate as notice of the sd covts & condons to every pson [or corporon] who shl for the time being be registered as proptor of the land in respect of wch such applicon shl be made.

Covenant to be registered (*a*).

21. The sd, *pchaser*, hby covts with the sd, *vendor*, to procure registron of himself under L. R. Act, 1925, as proptor of the ppty hby grted [assned] & to produce the Land Certfe throf to the sd, *vendor*, or his solor within 14 days from the date hrof.

(*b*) See Vol. 2, p. 69, note (*b*).

(*c*) See *ante*, p. 361, note. The vendor may protect himself by lodging a caution.

(*a*) This covenant should be inserted in a conveyance of freeholds or leaseholds held for a term, of which at least 40 years are unexpired, or for two lives yet to fall in, where the owner of the legal estate for the time being is under liability, and where the land (whether already registered or not) is situate in a compulsory district.

Statement as to Value.

The pties hto (other than the sd ——) hby certify *or* "It is hby decld and certified" that the transaction hby effected does not form pt of a larger transaction or of a series of transactions in respt of wch (*c*) the amt or value, or the aggregate amt or value, of the conson exceeds the sum of £500. Statement under Finance (1909–10) Act, 1910, s. 73 (*b*).

SEARCHES.

As to the various searches and enquiries on the purchase of land, see L. C. Act, 1925, and the Rules to be made thereunder, and under the Bankruptcy Act, 1914 (L. C. Act, 1925, s. 19; S. R. & O., 1925, No. 1096; W. N. [1925] 414). Under s. 1 of the L. C. Act, 1925, registers are to be kept of (*a*) pending actions, (*b*) annuities (subject as therein mentioned) (see s. 4 (1)), (*c*) writs and orders affecting land, (*d*) deeds of arrangement affecting land, and (*e*) land charges; and under sub-s. (2) an Alphabetical Index is to be kept of all entries in any of those registers.

Registration to be notice.

The registration of any instrument or matter required or authorised to be registered under the L. C. Act, 1925, is to be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration to all persons and for all purposes connected with the land affected as from the date of registration or other prescribed date, and so long as the registration continues in force. L. P. Act, 1925, s. 198. It should be ascertained, therefore, upon every purchase, by means of search in the Alphabetical Index, whether there are any entries in any of the registers of which notice may be material to the title. The nature of the entry (if any) appearing in the Alphabetical Index must be ascertained by search in the register referred to.

Official certificates of search.

Search may be made personally (s. 16) or an official certificate of search may be obtained on requisition being made in the prescribed form (s. 17 (*i*)),

(*b*) The double *ad valorem* stamp duty imposed by s. 73 of the Fin. (1909–10) Act, 1910, is not to be chargeable in the case of any sale the consideration for which does not exceed £500 provided that there is contained in the conveyance a statement to the effect mentioned in the section. In order, therefore, to avoid the payment of unnecessary duty, the statement required by the Act should be inserted on behalf of the purchaser in every conveyance to which it is appropriate. The statement being as to matter which will not usually be within the means of knowledge of persons whose concurrence in the conveyance is required merely for the purpose of completing the title to property in which they are not beneficially interested, it is important, where such persons concur, to indicate clearly by which of the parties to the conveyance the statement is certified.

The statement may conveniently be inserted at the end of the deed.

(*c*) In the case of a voluntary conveyance, continue "the value or aggregate value of the ppty conveyed or transferred exceeds the sum of £500."

specifying the name against which the search required is to be made. An official certificate of search is conclusive in favour of a purchaser: s. 17 (3); and a solicitor obtaining an official search will not be answerable for any loss resulting from any error in the certificate (s. 17 (7)). The same protection is afforded by sub-s. (8). to persons in a fiduciary position for whom the solicitor is acting. In view of the provision contained in the L. P. Act, 1925, s. 198, making registration notice, and of the additional importance which under the new practice will attach to a proper search being made, especially in regard to land charges; and in view also of the indemnity afforded by an official search certificate it should become the general practice to obtain an official certificate of search in all cases.

Period of search.

No search need, of course, extend over a period already covered by an official search of which the certificate is forthcoming. Subject to this and to the possibility of reverting after a time to the former practice of not searching back beyond, the last purchase for value, the following searches should be made in the Alphabetical Index:—

(1) For *lis pendens*, including petitions in bankruptcy filed after 1925 (L. C. Act, 1925, s. 2 (1); Bankcy Rules, 1925; S. R. & O., 1925, No. 1239; W. N. [1926] 25) for five years last past: s. 2 (8).

(2) For annuities registered under the Judgments Act, 1855, s. 12, *i.e.* for annuities for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, created after the 25th day of April, 1855, and before 1926, and not being an annuity created by a marriage settlement or will, as from the 26th day of April, 1855, or from the later day on which the person against whom the search is made became entitled to the property, whether in possession or not, or attained 21, whichever last happened; unless the conveyance to the purchaser will overreach any such annuity, as will be the case on a sale made under the powers of the S. L. Act, 1925 (see s. 72 of that Act), by trustees for sale (L. P. Act, 1925, s. 28), or by personal representatives (Admon. of Estates Act, 1925, s. 39 (*i*)).

(3) For writs and orders affecting land, including receiving orders in bankruptcy, made after 1925 (L. C. Act, 1925, s. 6 (1), for five years last past (L. C. Act, 1925, s. 6 (3)).

(4) For deeds of arrangement affecting land, search should be made until 1927, from the 1st January, 1889, and after 1926 (see L. C. Act, 1925, s. 8 (4)), for five years then last past.

(5) For land charges registered under the L. C. Act, 1888, *i.e.* land charges created or assigned after the 1st January, 1889, as from that date; and for all other land charges (including land charges of Class B or Class C created before, but assigned after the 1st January, 1926, as from that date: see L. C. Act, 1925, ss. 13 and 14.

Advowson.

On a purchase of an advowson or next presentation search should be made in the Diocesan Register for the presentations to the living for a period of 100 years: Williams V. & P., 3rd ed., 421.

Counties palatine.

Searches for *lis pendens* affecting land in Lancashire may still be required to be made in the district register; see the Judgments Act, 1855. The register at Durham has been closed for many years.

Local registries.

If the land is freehold or leasehold for a term exceeding 21 years, and is in Middlesex or Yorkshire, the local registry should be searched; see Elph. and Clark on Searches, c. 10, and 52 Sol. J. 168, 189. Section 11 of the L. P. Act, 1925, continues the necessity of registration in the appropriate registry of memorials of all instruments, including probates and

letters of administration, which operate to transfer or create legal estates or charges by way of legal mortgage, though memorials of instruments not having this operation are exempt from registration, and if registered do not affect any priorities. The Middlesex and Yorkshire Registry Acts do not apply to land registered under the Land Registration Act, 1925, except estates and interests excepted from registration: L. R. Act, 1925, s. 135. Section 136 of the last mentioned Act gives the Lord Chancellor power to agree with the county councils of any of the three ridings in Yorkshire to transfer the local deeds registry established in that riding to the land registry upon the principles already in force with respect to the Middlesex registry under the Registry (Middlesex Deeds) Act, 1891 No such transfer has yet been made. The Middlesex Registry Act, 1708, does not apply to deeds of arrangement or other instruments made after the 30th July, 1900, or to land charges (except puisne mortgages) of Classes B, C, or D, created after 1925, all of which are capable of, and should be registered in the general land charges register: L. C. Act, 1925, s. 18. Searches for general equitable charges, restrictive covenants, equitable easements, and estate contracts affecting land in any of the three ridings of Yorkshire should be made in the special department created in each of the three local registries for this class of charge under s. 10 (6) of the L. C. Act, 1925. The search in Middlesex will be in the office of Land Registry, see Land Registry (Middlesex Deeds) Act, 1891. The practice is only to make searches as from the last purchase or mortgage, but some practitioners direct searches in Middlesex and Yorkshire to be made for 20 years. See Land Registry (Middlesex Deeds) Provisional Rules, 1925: W. N. [1926] 20. Searches for land in the Bedford level are unnecessary: Elph. and Clark on Searches, 145.

As to the priority of assurances and wills entitled to be registered in Yorkshire, see the Yorkshire Registries Act, 1884, s. 14; the Amendment Act of 1885, s. 4; *Battison* v. *Hobson*, [1896] 2 Ch. 403. The registration in a local deeds registry of a memorial of an instrument transferring or creating a legal estate or charge by way of legal mortgage constitutes actual notice of the transfer or creation of such estate or charge to all persons and for all purposes whatsoever from the date of registration, but the registration of a memorial of an instrument not required to be registered gives no such notice: L. P. Act, 1925, s. 197. The notice thus given is without prejudice to the provisions of s. 94 of the same Act as to further advances by a mortgagee as to which see Vol. II., p. 33, note (*d*). Registration of instruments under ss. 10 (6) and 18 of the L. C. Act, 1925, constitutes actual notice of such instrument and of the fact of registration to all persons and for all purposes connected with the land affected as from the date of registration without prejudice as above: L. P. Act, 1925, s. 198. See also s. 5 of the Yorkshire Registries Amendment Act, 1885, discussed 56 Sol. J. 831, 840, 843.

Companies.

On a sale by a company the register of mortgages and charges kept by the Registrar under the Companies C. Act, 1908, s. 93 (which also applies to land charges created by a company: L. C. Act, 1925, s. 10 (5); L. P. Act, 1925, s. 205 (3)), and by the company under s. 100 or under the repealed Companies Acts (the Act of 1862, s. 43, the Act of 1900, s. 14, and the Act of 1907, s. 17) should be inspected immediately prior to completion, and search should be made at Somerset House for winding-up orders and resolutions for voluntary winding-up, or in the *London Gazette* for advertisements of winding-up petitions. If there is any doubt as to the position

of the company, inquiry should be made of the company whether there are any outstanding petitions for compulsory winding-up.

Enrolled deeds. Search in the Central Office and in the Public Record Office, Rolls Yard (R. S. C., Ord. 61, r. 13), for enrolled deeds may sometimes be necessary.

Bankruptcies. The searches in bankruptcy formerly made will gradually cease to become necessary. The searches for *lis pendens* and for writs and orders will disclose recent bankruptcies. As regards earlier bankruptcies, the right of an undischarged bankrupt to dispose in favour of any person dealing with him *bonâ fide* and for value before intervention by the trustee in bankruptcy, of personal property acquired subsequently to his bankruptcy, is extended by the Bankruptcy Act, 1914, s. 47 (1) to after-acquired real estate: see *post*, p. 578.

It is not necessary in order to preserve the title of the trustee in bankruptcy to real estate situate in Middlesex, that the order of adjudication should be registered: *Re Calcott & Elvin*, [1898] 2 Ch. 460.

Index map. On the purchase of unregistered land the index map at the Land Registry Office should also be inspected to ascertain that the title has not been registered, and enquiry must be made whether any caution against first registration has been lodged, and the list of pending applications should be searched.

Leaseholds. The searches for leaseholds are the same as in the case of freeholds. Searches need not be made as to any lease at rack-rent, or as to any lease not exceeding 21 years where the actual possession and occupation goes with the lease, under the Middlesex Registry Act, 1708, s. 17, nor under the repealed Yorkshire Registry Acts before 1885, Yorkshire Registries Act, 1884, s. 28 (see 2 & 3 Anne, c. 4, s. 16; 6 Anne, c. 35, s. 29; and 8 Geo. 2, c. 6, s. 34), nor as to any lease under 21 years where accompanied by actual possession after 1884.

Trustees personal representatives and mortgagees. Contrary to the former practice the usual searches for *lis pendens*, writs, and orders, and land charges created or assigned after 1925, will for the future be made against trustees, personal representatives and mortgagees making title under their paramount powers. It is not necessary to search against mortgagees who have been paid off: Judgments Act, 1855, s. 11.

Local land charges. The Land Charges Act, 1925, s. 15, makes provision for the registration in the prescribed manner and by the proper officer of the local authority, of "local land charges" acquired either before or after Jany 1st, 1926, by the council of any administrative county, metropolitan borough, or urban or rural district, or by the corporation of any municipal borough, or by any other local authority under the Public Health Acts, 1875 to 1907, the Metropolis Management Acts, 1855 to 1893, or the Private Streets Works Act, 1892, or under any similar statute (public, general, or local, or private) passed or hereafter to be passed which takes effect by virtue of the statute.

Subject to the provision made by sub-section 5 in reference to charges created or arising before 1926, any such local land charge is made void as against a purchaser for money or money's worth of a legal estate in the land affected thereby unless registered in the proper register before the completion of the purchase. Sub-section 5 provides that nothing in the section is to operate so as to impose any obligation to register any local land charge created or arising before 1926, except after the end of 1926, or to discharge a purchaser from liability in respect of any local land charge which is not for the time being required to be registered.

Separate rules have been made under the Act in reference to "local land charges" for giving effect to the provisions of the section: sub-s. (6). See S. R. & O., 1925, No. 1148; W. N. [1925] 426.

Any prohibition of or restriction on the user or mode of user of land or buildings enforceable by any local authority by virtue of any statute or order, scheme, or instrument made in pursuance of any statute, and any resolution passed by a local authority to prepare or adopt a town-planning scheme, is to be deemed to be a restrictive covenant, and where arising or passed after 1925, is to be registered by the proper officer as a local land charge: (sub-s. (7)); but any such prohibition, restriction, or resolution affecting an area or district may be registered generally against the area or district by reference to the statute, order, scheme, or instrument under which it is imposed.

The section applies to "local land charges" affecting registered as well as unregistered land: sub-s. (8).

Registered land.

It follows from the above that search must be made upon the purchase of registered land for local land charges. Except where the property is registered with a possessory title, in which case searches may be required up to the date of first registration, no further searches will be necessary.

PRECEDENTS.

I.

CONVEYANCE *of* FREEHOLDS *by a* VENDOR *absolutely entitled to a* PURCHASER, *with* RECITALS (*a*).

Parties.

A DEED OF CONVCE, made the —— day of —— betn A., *vendor*, of, &c., of the one pt, & B., *pchaser*, of, &c., of the other pt: Recitals.

Whas the sd A. is the este owner in respt of the fee simple of the ppty hby assured for his own use and benefit absolutely [subjt to "the lease" *or* "right of way" *or otherwise as the case may be* hrinar mentd, but] free from [all other] incumbces, & has agrd with the sd B. for the sale throf to him [subjt as afsd] for the sum of £——(*b*). NOW THIS DEED WITNESSETH that in pusance of the recited agrmt, & in conson

Title.

Witnesseth.

(*a*) It is usual in this case, and it is not uncommon in less simple cases, to dispense with recitals; see the next precedent and other instances *infra*; but recitals are sometimes inserted, with the object of securing prospectively the benefit of their becoming evidence in support of the title under the L. P. Act, 1925, s. 45 (6), or otherwise: see *ante*, p. 441, note (*a*).

As to omitting recitals.

(*b*) Though convenient in simple cases, it is not always practicable to combine, as in the text, the recital of title with the introductory recital of the agreement for sale. Where, for instance, the property is to be conveyed subject to a mortgage (as in Prec. XXV.), or the mortgagee is to be made a party for the purpose of releasing his security (as in Prec. XII.), it is necessary to interpose a recital as to the state of the debt.

Grant. of the sum of £—— now (*c*) pd by the sd B. to the sd A. (the receipt whrof is hby acknowed) the sd A., as benefl owner, hby grts unto the sd B., *pcels*, pp. 480 *et seq.*, To HOLD the same UNTO the sd B., in fee simple (*d*) [subjt if and so far as the same is subsisting to a lease dated, &c., p. 500, f. **3**, *or* "to a right granted, &c.," p. 464, note]: [*Acknowmt & undertakg as to munimts*, p. 515]; [*Statement as to value*, p. 525]. IN WITNESS, &c. (*e*).

[The Schdle above referred to (*f*).]

(*Schdle of muniments.*)

II.

CONVEYANCE *of* FREEHOLDS *by a* VENDOR *absolutely entitled to a* PURCHASER. SHORT FORM WITHOUT RECITALS (*g*).

Parties. THIS DEED OF CONVCE, made the —— day of —— betn A., of, &c. (hrinar called the vendor), 1. B., of, &c.

Wit-nesseth. (hrinar called the pchaser), 2. WITNESSETH that in conson of the sum of £—— pd by the pchaser to the vendor (the receipt

Grant. whrof is hby acknowed) the vendor, as benefl owner, hby grts

Haben-dum. to the pchaser, *Parcels*, pp. 480, *et seq.* To HOLD UNTO the pchaser in fee simple [*Acknowmt & undertakg as to munimts*, p. 515]: [*Statement as to value*, p. 525]. IN WITNESS, &c.

[*Schedule of muniments.*]

(*c*) It is unnecessary to notice that part of the money was paid, if it was so, as a deposit on the contract.

(*d*) As to the insertion of these words, see Preliminary Note, *supra*, p. 439.

Execu-tion. (*e*) For full forms of testimonium, attestation, and endorsed receipt, see "DEEDS, FORMAL PARTS OF," *post*, pp. 726 *et seq.* As to the rights of the purchaser with respect to the execution of the conveyance, see the L. P. Act, 1925, s. 75; and as to execution by attorney, see s. 123, and *post*, p. 724.

Stamp. As to the stamp, see the Stamp Act, 1891, Schedule tit. "CONVEYANCE OR TRANSFER ON SALE;" and *ante*, p. 390, note.

(*f*) This schedule will be preceded by the schedule of parcels, if any is referred to.

(*g*) See notes to Precedent 1.

III.

CONVEYANCE *of* ENFRANCHISED COPYHOLDS (*a*) *by a* VENDOR *absolutely entitled to a* PURCHASER.

Parties, A. (hrinar called the vendor), 1; B. (hrinar called the pchaser), 2. Whas the land hrinar conveyed wch was formerly copyhold of the manor of —— & was enfranchised by virtue of the Property Acts, 1922 & 1924, is now vested in the vendor as este owner in respt of the fee simple throf for his own use & benefit absolutely subjt to the manorial incidents affectg the same [*or,* subjt to the compenson rent-charge] & to the rts of the lord of the sd manor hrinar mentd but orwise free from incumbces, *Contract for Sale,* p. 471, f. **2**: NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson, &c. (the rect, &c.), p. 478, the vendor **as benefl owner**

Recitals.

Title.

Witnesseth.

(*a*) By virtue of s. 128 of the L. P. Act, 1922 (which Act, as amended by the L. P. (Amendment) Act, 1924, s. 2, and Second Schedule, still remains in force in relation to the enfranchisement of copyholds), and s. 202 of the L. P. Act, 1925, every parcel of copyhold land was enfranchised and became freehold on the 1st of January, 1926, and all modes of assurance authorised by special custom were abolished. Certain manorial incidents (including rights as to timber) mentioned in s. 128 (2) of the Act of 1922, were temporarily saved and provision for their ultimate extinguishment was made by ss. 138 and 139 of the Act of 1922. Any assurance (as defined by s. 129 (9) of the Act of 1922) of the enfranchised land made while any of such manorial incidents remain unextinguished will, except in the special cases for which the Act provides, become void "so far as regards the grant or conveyance of a legal estate," unless produced for endorsement (s. 129 (1)) to the steward of the manor within six months of its execution, or such extended period as the Court may allow. As to fees, see S. R. & O., 1926, No. 3; [1926] W. N. 26. Unless and until avoided, an assurance by the estate owner will operate to pass his estate in the land, subject (until the extinguishment of the manorial incidents saved by the Acts) to those incidents, and subject to the rights as to minerals and to the sporting and other rights preserved to the lord of the manor by the Twelfth Schedule to the Act of 1922. The assurance, therefore, will not be an assurance of the land severed from the mines under the land, as is the case where a freeholder grants land excepting the mines lying thereunder, but an assurance (subject to the property of the lord in the minerals) carrying with it (as under the old law) the right, so soon as the minerals are worked out, to the property and possession of the mines or cavities where the minerals have been worked: see *Eardley* v. *Granville,* 3 Ch. D. 826; *Derry* v. *Sanders,* [1919] 1 K. B. 223, 231; Scriven on Copyholds, p. 298. A mortgage of copyholds affected by covenant to surrender or by surrender existing on 1st of January, 1926, is converted into a mortgage for a term of 3,000 years subject to a proviso for cesser corresponding to the subsisting right of redemption. For recital of such mortgage, see *ante,* p. 445.

Assurances of enfranchised copyholds.

Necessity of production to steward.

Nature of assurance.

Conversion of mortgages of copyholds.

Grant. hby conveys unto the pchaser, *Parcels*, pp. 480 *et seq.* To HOLD unto the pchaser in fee simple subjt to the [manorial incidents affectg the same & to the] rts of the lord of the sd manor in or to any mines or minerals in or under the sd land & the sportg & other rts affectg the same & preserved by the sd Acts [& subjt to a terminable & variable rent-charge issuing out of the sd land under or by virtue of a compenson agrmt dated, &c., & made psuant to the sd Acts (*b*) btwn, &c., of an amt eql to the instalmts of ppal & intt from time to time payable under the sd agrmt as shown in the schdle hto & payable at the same time as such instmts & subjt also to all pwrs & remedies for securg paymt of the sd rent-charge (*c*)] [*Statement as to value*, p. 525.] IN WITNESS, &c.]

[*Schedule of Instalments.*]

IV.

ASSIGNMENT *of* LEASEHOLDS *by the* LESSEE *or* ASSIGNEE *of the* LEASE *to a* PURCHASER (*d*). VARIATION *where* LESSOR'S LICENCE *is required, where a* SINKING FUND POLICY (*e*) *is included in the* ASSIGNMENT *and for* LAND *in a* COMPULSORY DISTRICT.

Recitals. *PARTIES*, A., *vendor*, 1; B., *pchaser*, 2. *Recite lease*, p. 451,

(*b*) See the L. P. Act, 1922, s. 138 (6), and the form of compensation agreement in the Thirteenth Schedule to the same Act providing for payment of a terminable and variable rent-charge.

(*c*) A covenant by the purchaser to pay and indemnify the vendor against the rent-charge may be omitted in reliance upon the covenant set out in Part VII. of the Second Schedule to the L. P. Act, 1925, and implied by virtue of s. 77 (1) of the Act.

(*d*) The assignment in the text follows the form hitherto recognised as the appropriate, if not the only form of assignment on sale of leaseholds. Though still technically correct, it is unnecessarily cumbrous and in some cases, especially where freeholds and leaseholds are dealt with in the same conveyance, will be found less well adapted to the requirements of the new system of conveyancing than the form suggested in the next following Precedent.

Variations where sinking fund policy is assigned.

(*e*) Where a sinking fund policy is assigned the variations will be as follows:—Before the agreement for sale say, "AND WHAS the sd A. is absolutely entitled to the poly hby assned." At the end of the agreement for sale add, "& of the poly hby assned." After the habendum say:—"AND THIS DEED ALSO WITNESSETH

f. **42** (*f*); *Assnmt of lease*, p. 452, f. **45**, *or Devolon of title, if any*, p. 453, f. **47** (*a*); *Contract for sale*, p. 471, f. **3**, *or where no money passes*, p. 471, f. **4** (*b*): NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson, &c. (*b*) (the receipt, &c.), p. 478, the sd A. as benefl owner, hby

Lease.

Witnesseth.

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that in further psuance of the sd agrmt & in conson of the premes, the sd A. as benefl owner hby assns unto the sd B. all that sinkg fund poly, &c." (see *ante*, p. 490), "To hold the same unto the sd B. absolutely." If preferred the two witnessing parts may in this case be paragraphed. Notice of the assignment must be given to the office.

(*f*) If the lease contains a covenant against assignment without licence, this should be noticed in the recital of the lease. As to the nature of such a covenant, see *post, sub tit.* "LESSEES COVENANTS." The provisions of the L. P. Act, 1925, s. 146 (which replaced the C. Act, 1881, s. 14, and the C. Act, 1892, ss. 2, 4, 5) as to restrictions on and relief against forfeiture of leases and underleases are applicable in the case of the breach of a covenant against assignment, etc., unless the breach occurred before the commencement of the Act. If, as is unusual, the lessor concurs in the assignment to give his consent, the following recital will be inserted after the agreement for sale :—

"AND WHAS the sd, *lessor*, has agrd to concur in these psnts, for the ppose of givg his consent in mner hrinar appearg to the assnmt hby made;" the assignment will be expressed to be made "with the consent (hby testified) of the sd, *lessor*;" and the following proviso should be added immediately after the habendum, "PROVD always that the licence hrinbfe given by the sd, *lessor*, shl not be deemed to authorise any further assnmt [or any underlettg] of the premes." If the lessor gives licence by a separate instrument (for form of which, see *post, sub tit.* LICENCES), the following recital of the fact should be inserted: "AND WHAS the necy licence in writg of the landlord to the assnmt hby made has been duly obtained" In either of the above cases if the property assigned is comprised in more than one lease, and licence is required for the assignment of the property comprised in one lease only, add in the recital, after the words "hby made," the words "of the premes comprised in the sd lease of, &c."

Recital as to concurrence of lessor.

Proviso restricting licence.

(*a*) If the property is subject to an underlease, it will be noticed in the recital of the assignment or devolution of title to the vendor and in the contract for sale, and the habendum will be "subjt if and so far as subsisting to the sd underlease." For several underleases, reference may be made in the first instance to "the underleases specified in the schedule hereto."

Subject to under leases.

As to the words "if & so far as subsisting," see *ante*, p. 500, note (*b*).

(*b*) If no money passes say "in conson of the covts by the sd B. hrinar contained" and insert after the habendum the following covenant

assns unto the sd B., *Parcels by reference to lease*, p. 485, f. **17**; *Habendum to B.*, p. 504, f. **16**. [*For a lease having at least 40 years to run in a compulsory district, covenant to be registered* (*c*), p. 524, f. **21**.] [*Statement as to value*, p. 525] (*d*). IN WITNESS, &c.

V.

ASSIGNMENT *of* LEASEHOLDS *by the* LESSEE *or* ASSIGNEE *to a* PURCHASER. CONCISE MODERN FORM (*e*).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite title to leaseholds*, p. 463, f. **4**; *Contract for sale*, p. 471, f. **2**, *saying* "hby assigned." NOW THIS DEED WITNESSETH that in psuance of the sd agreemt & in conson, &c. (the receipt, &c.), p. 478, the sd A. as beneft owner, hby assns unto the sd B., *Parcels by refce to lease in schedule*, p. 485, f. **17**; *Habendum* to B., p. 504, f. **16**. [*Statement as to value*, p. 525.] IN WITNESS, &c.

Assignment.

Schedule.

by B.:—" & the sd B. hby covts with the sd A. that he the sd B. or his succors in title will henceforth durg the contince of the sd term pay the rent reserved by & perform & observe the covts on the pt of the lessee & condons contd in the sd lease, & will at all times keep the sd A. & his succors in title effectually indemnified agst all actions & proceedgs, costs, damages, expses, claims & demands whatsr by reason or on acct of the non-paymt of the sd rent, or any pt throf, or the breach, non-pformce or non-observce of the sd covts or condons or any of them." The provisions of the Increase of Rent & Mortgage Interest (Restrictions) Act, 1920, s. 8, with reference to the payment of a fine or premium, are not applicable in the case of an assignment of a lease: *Mason* v. *Harris*, [1921] 1 K. B. 653.

(*c*) See *ante*, p. 524, note (*a*). In the case here mentioned, the legal estate will not pass unless the purchaser or his successor in title or assign applies to be registered within two months (subject to extension in certain cases): Land Registration Act, 1925, s. 123.

(*d*) A covenant by the assignee to pay the rent & observe the covenants of the lease & indemnify the conveying party is implied: L.P. Act, 1925, s. 77 (1) (C).

(*e*) See note (*d*) to last Precedent.

VI.

ASSIGNMENT *of* LEASEHOLDS *by the original* LESSEE *to a* PURCHASER. CONCISE FORM *by* ENDORSEMENT *on the* LEASE, *without Recitals.* VARIATION *where* LESSOR *joins to* RELEASE LESSEE *from* COVENANTS, *and takes* SUBSTITUTED COVENANTS *from* ASSIGNEE (*a*).

PARTIES, the within-named A. (hrinar called the vendor), 1; B., of, &c. (hrinar called the pchaser), 2. WITNESSETH that in conson, &c. (the rect, &c.), p. 478, the vendor, as benefl owner, hby assns unto the pchaser, ALL the premes demised by the within-written indre of lease, TO HOLD to the pchaser, for the residue of the term of —— yrs granted by the sd lease, subjt to the rent, covts, & condons of the sd lease. [*Statement as to value*, p. 525.] IN WITNESS, &c.

Assignment. Habendum.

(*a*) See last precedent and the notes thereto. Occasionally the lessor is willing to release the original lessee from the covenants of the lease, on having a substituted covenant from the assignee; in that case the lessor will be added as a party of the second part and the deed will be in paragraph form, the first paragraph containing the assignment and the second paragraph the release following:—"In conson of the covt of the sd B., *pchaser*, hrinar contained & of the premes, the sd X., *lessor*, hby releases the sd A., his exs, & ads, from All & singr the covts & agrmts on the pt of the sd A. in the sd lease contained & all liability thrunder, & all actions, proceedings, claims, & demands in respt of any breach of any such covts htofore or hrafter committed or happeng: PROVD ALWAYS that the release hrinbfe contd shl not affect the sd covts & agrmts so far as the same are real covts & agrmts, bindg on the sd demised premes, & the psons from time to time possed throf, but only so far as regards the psonal liability of the sd A., his exs, & ads, thrunder: PROVD ALSO that the sd release or anything hrin contained shl not prejudice or affect the right of the sd X., his exs, ads, & assns, to re-enter upon the sd demised premes for non-paymt of the rent reserved by or the breach of any of the covts, agrmts, or condons contained in the sd lease: [*Add covenant by assnee with lessor to pay rent & pform covts, & power of re-entry on breach of covt, as in a lease mutatis mutandis.* See *sub tit.* LEASES.]

Variation where lessor releases original lessee from covenants, the assignee entering into a substituted covenant.

VII.

ASSIGNMENT *of* PART *of the* PROPERTY *comprised in a* LEASE *at an* APPORTIONED RENT *without the* CONSENT *of the* LESSOR *to the* APPORTIONMENT (*a*).

Recitals. Agreement. *PARTIES*, A., *vendor*, 1; B., *pchaser*, 2. *Recite lease*, p. 451, f. **42**, *describing the parcels as indicated in the note thereto. Agrmt for sale*, p. 471, f. **5**, *saying* "for the sale & transfer to him of his este in the ppty hby assned being pt of the ppty comprised in the sd lease for the sum of £——": AND WHAS upon the treaty for the sd sale it was agreed that in the convce to the sd B. of the ppty hby assned the sd yrly rent of £—— should be expressed to be apportd btwn the ppty hby assned & the ppty retained by the sd A. in mner hrinar expressed: NOW THIS DEED WITNESSETH, &c., *conson* (the receipt, &c.), *assnmt by A.* "**as benefl owner**," (*b*) *to* B., *Parcels in full or by reference to*

Witnesseth.

(*a*) It has been held in *Johnson* v. *Wild*, 44 Ch. D. 146, that an assign of part of the land in lease, who pays the whole rent, has no right to contribution from an under-lessee of another part, the original lessee having covenanted in both cases to pay the rent and to indemnify, but having subsequently become bankrupt.

Apportioned rent recoverable by action. Although a lessor can always distrain for the whole rent on any part of the land, still he can only recover by action an apportioned part of the rent against an assign of part only of the land: *Stevenson* v. *Lambard*, 2 East, 576. If upon the severance of the term, no apportionment were made in which the lessor concurred or had subsequently acquiesced (as to which see *ante*, p. 66), the amount recoverable by action against each assignee of a part of the land must be calculated according to the value of the severed portions at the date of the severance: *Salts* v. *Battersby*, [1910] 2 K. B. 155.

Re-entry. As to the lessor's right of re-entry upon all the land in lease upon default of the assignee of part to observe and perform the covenants of the lease; and the risk to assignees of other parts involved by that right, see 56 Sol. J. 796.

Stamp. A conveyance of this nature does not require an *ad valorem* stamp in respect of the apportioned rent: *Swayne* v. *I. R. Commrs.*, [1900] 1 Q. B. 172; cf. *Martin* v. *I. R. Commrs.*, 91 L. T. 453.

(*b*) See Preliminary note, *ante*, p. 439. The words "as beneficial owner" imply in addition to the usual covenants for title, covenants on the part of the vendor for payment of the apportioned part of the rent payable by him and for observance and performance of the covenants of the lease so far as they relate to the land retained by him and for indemnity in the terms set out in paragraph 2 of Part X. of the Second Schedule to the L. P. Act, 1925: see s. 77 (1) D. (ii). Similar covenants on the part of the purchaser are implied by the same section without the use of any

schedule, follwg as nearly as may be the description in the lease, " being pt of the ppty comprised in & demised by the recited lease " ; *Habendum* UNTO the sd B., henceforth for the residue now unexpired of the sd term of —— yrs, subjt to the paymt as from the —— day of ——, of such proportion as is hrinar mentd of the sd rent of £—— reserved by the sd lease, & to the covts by the lessee (other than the covt for paymt of the sd entire rent), & condons thrin contd & henceforth to be pformed & observed in respt of the ppty hby assned, PROVD ALWAYS & it is hby agrd & declared that the sd rent of £—— shl as from the sd —— day of —— be & the same is hby apportioned as follows, namely, the yrly rent of £——, pt throf shl be charged exclusively upon & be payable out of the ppty hby assned in exoneron of the residue of the ppty comprised in the sd lease & the yrly sum of £——, the balance of the sd rent of £—— shl be charged upon & be payable out of the residue of the sd ppty in exoneron of the ppty hby assned. [*Clauses extendg statutory implied covt for paymt of rent & indemnity by* B. *&* A. *resptly*, p. 517, ff. **1** & **2**.] [*Acknowmt & undertakg as to the lease & munimts to be entered into by A. if they are retained by him, or orwise by B.*, p. 516.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

Haben-dum.

Appor-tionment of rent(*c*).

Schedule.

VIII.

ASSIGNMENT *of* PART *of the* PROPERTY *in a* LEASE *which has already been* ASSIGNED *at an* APPORTIONED RENT.

PARTIES, A., *vendor*, 1 ; B., *pchaser*, 2. *Recite lease*, p. 451, *describing the parcels as indicated in the note thereto ; Assignmt*

Recitals.

specially prescribed adoptive words. The usual charge for money payable under the indemnity is implied by the clauses extending the statutory covenants inserted at the end of the deed.

(*c*) The effect of this clause is to supply the usual powers of distress and entry and perception of rent formerly inserted in such cases, and now conferred by s. 190 of the L. P. Act, 1925, where in the conveyance the rent is expressed to be apportioned. The rule relating to perpetuities does not apply to the powers conferred by the section (L. P. Act, 1925, s. 162) and the power of distress is not a bill of sale within the meaning of the Bills of Sale Acts (s. 189) See the statutory implied powers further discussed in the Preliminary note, *ante*, p. 432 ; and, in their application to rent-charges, *ante*, p. 379, note (*a*).

to A. of part of the leasehds at an apportioned rent, p. 452, f. **46** (*a*), *or devolution of title to A. of part of leaseholds*, p. 453, f. **48**: AND WHAS the sd A. as este owner of the ppty hby assned, &c., *continue agreemt for sale, as in* f. **5**, p. 471: NOW THIS DEED WITNESSETH, that in psuance, &c., *conson* (the receipt, &c.), the sd A., as benefl owner, hby assns unto the sd B., *Parcels in full or by reference to schedule*, p. 483: *Habendum*, p. 504, f. **16**, *with variation in note.* [*Clause extending statutory implied covenant on the part of B.*, p. 517, f. **1** (*b*).] [*Acknowmt & undertakg as to munimts*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

Witnesseth.

[*Schedule.*]

(*a*) If the assignment at an apportioned rent were made after 1925, this recital will run as follows: "AND WHAS by an assnmt for valuable conson dated, &c., and made, &c., the sd K. (who was then the este owner of the ppty comprised in the recited lease in respt of the sd term of —— yrs granted by the sd lease & in the assnmt now in recital was expressed to convey as benefl owner) transferred his este in the ppty hby assned (being pt of the ppty comprised in the sd lease) to the sd A.: AND by the sd assnmt the sd entire yrly rent of £—— was expressed to be apportioned as follows, namely the yrly rent of £—— pt throf was charged exclusly upon the ppty hby assned & the yrly rent of £—— the blnce of the sd entire yrly rent of £—— was charged exclusly upon the residue of the ppty comprised in 'the sd lease." In this case the benefit of the statutory implied covenants for payment by the vendor and purchaser respectively of the apportioned rents, and for observance by them respectively of the covenants in the lease and for indemnity will remain annexed to the land for the benefit of which they were respectively entered into (L. P. Act, 1925, s. 77 (5)); and the powers of entry and distress and perception of rent implied by s. 189 will enure for the benefit of the lessee for the time being of any other land comprised in the lease (*i.e.* other than the land in respect whereof default is made) in whom, as respects that land the residue of the term or interest created by the lease is vested: see s. 189 (4).

(*b*) See *ante*, p. 517, note (*a*).

IX.

ASSIGNMENT *of* PART *of* PROPERTY *in a* LEASE *the* REMAINING PART *having been* PREVIOUSLY ASSIGNED *at an* APPORTIONED RENT (*a*).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite lease*, p. 451, *describg the parcels as indicated in the note thrto; Recite assnmt by A. of pt of the leaseholds at an apportioned rent*, p. 452, f. **46**, *saying* " assned to the sd K. pt of the ppty demised by the sd lease " (*b*): AND WHAS the sd A. as este owner of the ppty hby assned, &c., *continue agreemt for sale* as in f. **5**, p. 471. Recitals.

NOW THIS DEED WITNESSETH that in psuance, &c., *conson* (the receipt, &c.) the sd A. as **benefl owner** hby assns unto the sd B. *Parcels in full or by reference to schedule*, p. 483; *Habendum*, p. 504, f. **16**, *with variation in note, saying* " subjt also but with the benefit of the covts & provons contained in [implied by] the hrinbfe recited assnmt of ——. [*Clause extending statutory implied covenant on the part of B.*, p. 517, f. **1**.] [*Acknowmt & undertakg as to munimts*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c. Witnesseth.

[*Schedule.*]

X.

CONVEYANCE *of* FREEHOLDS *by* MORTGAGOR *and* MORTGAGEE *to a* PURCHASER. CONCISE FORM *applicable whether the* MORTGAGE *was made* BEFORE *or* AFTER *the* COMMENCEMENT *of the* LAW *of* PROPERTY ACT, 1925 (*a*).

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2; C., *pchaser*, 3. WHAS the sd A. is the este owner in respt of the fee simple of the Recitals.

(*a*) See notes to last Precedent.

(*b*) If the assignment at an apportioned rent were made after 1925 the recital will be in the form in note (*a*), *supra*, saying " transferred his este in pt of the ppty comprised in the sd lease," and later " thby assned."

(*a*) Mortgages of the fee simple created before 1926, whether conveying the legal estate subject to redemption or an equitable estate subject to the legal estate vested in a prior mortgagee have been converted by Part VII. of the First Schedule of the L. P. Act, 1925, into legal terms for 3,000 years, from the 1st of January, 1926, or, in the case of a subsequent mortgage,

ppty hby assured subjt only to a mtge throf dated, &c., & made, &c., by virtue whof [& of the transitional provons of the Law of Property Act, 1925 (*b*)] a term of —— yrs thby limited out of the fee simple of the same ppty, *or* "3,000 yrs from the 1st day of January, 1926, in the same ppty created by the sd Act" is now vested in the sd B. witht impeachmt of waste but subjt to a provo for cesser throf on paymt to the sd B. of the sum of £—— with intt for the same on a day now past, *or* "by way of mtge for securg the paymt to the sd B. of the sum of £—— with intt thron as thrin expressed." *Recite state of mtge debt*, p. 476, f. **23**; *Contract for sale*, p. 471, f. **2**; *Agrmt of mtgee to join*, p. 476, f. **24**.

Witnesseth.

NOW THIS DEED WITNESSETH that in psuance of the recited agrmt & in conson of the sum of £—— now pd by the sd C. at the request of the sd A. in mner follg namely the sum of £—— pt throf to the sd B. in full discharge of the moys owg to him under the sd mtge (the rect whrof the sd B. hby acknowes (*c*)) and the sum of £—— residue throf to the sd A. (the rect & paymt in mner afsd of wch respve sums, makg togr the sd pchase-moy of

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for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately prior thereto, without impeachment of waste, and any estate in fee simple outstanding in a mortgagee at the commencement of that Act will by virtue of the Act have become vested in the mortgagor or other person then entitled to the equity of redemption in the property. It should be noted that a subsequent incumbrancer whose estate under the old law was equitable only then acquires a legal estate but the statutory conversion confers no benefit upon such incumbrancer as against a purchaser for value without notice unless his legal term is protected either by the deposit of the documents of title or by registration as a land charge: para. 6 of Part VII. of the First Schedule of the above Act. Mortgages created after 1925 which affect legal estates in land must be created either by demise or by charge by way of legal mortgage: see Vol. II., p. 1. If the latter method is adopted a legal term of years is implied by s. 87 of the L. P. Act, 1925.

(*b*) See L. P. Act, 1925, s. 39, and First Schedule, Part VII.

(*c*) Although by virtue of the L. P. Act, 1925, s. 115 (1), a receipt in the prescribed form endorsed on, written at the foot of or annexed to the mortgage and executed by the person in whom the mortgage property is vested and who is legally entitled to give a receipt for the mortgage money, operates as a surrender so as to merge the mortgage term in the immediate reversion; such a receipt will be liable to the same stamp duty as if it were a reconveyance under seal (s. 115 (5)). It will generally be deemed advisable, therefore, that the mortgagee instead of being discharged by a separate receipt should join in the conveyance to the purchaser so that the only stamp duty will be that on the conveyance: see also note (*i*), *post*, p. 543.

£—— the sd A. hby acknowes) the sd A. **as benefl owner** hby grants & the sd B. **as mtgee** by the diron of the sd A. & to the intent that the sd mtge term shl merge in the freehd reversn of the ppty hby assured hby assns & surrs unto the sd C.: *Parcels*, p. 480 *et seq.*: *habendum to C. in fee simple*, p. 500, f. **2** (*d*). [*Acknowmt & undertakg as to munimts by A.*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c. Grant.

[*Schedule of Muniments.*]

XI.

CONVEYANCE *of* FREEHOLDS *by* MORTGAGOR *and* MORTGAGEE *to a* PURCHASER, *the* MORTGAGE *having been created* AFTER 1925 *by* CHARGE *by way of* LEGAL MORTGAGE (*e*).

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2; C., *pchaser*, 3. WHAS A. is the este owner in respt of the fee simple of the ppty hby assured subjt only to a charge dated, &c., & made, &c., & expressed to be by way of legal mtge for securg paymt to the sd B. of the sum of £—— with intt thron as thrin expressed. *Recite state of mtge debt*, p. 476, f. **23**; *Contract for sale*, p. 471, f. **2**; *agrmt of mtgee to join*, p. 476, f. **24**: NOW THIS DEED WITNESSETH that in psuance of the recited agrmt & in conson, &c., *as in last Precedent*, the sd A. **as benefl owner** hby grants & the sd B. **as mtgee** by the diron of the sd A. hby grants & releases unto the sd C.: *Parcels*, pp. 480 *et seq.*; *habendum to C. in fee simple discharged from the legal charge*, p. 505, f. **17**. [*Acknowmt & undertakg as to munimts by A.*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c. Recitals. Witnesseth.

(*d*) The words "discharged from all ppal moys & intt secured" etc., formerly inserted in the habendum in such cases (see *ante*, p. 505, f. **17**) appear to be unnecessary where, as in the case supposed in the text, the estate conveyed is not charged with the debt. The debt is secured by a term which the mortgagee joins to merge in the freehold. The debt and the term for securing the same are alike extinguished.

(*e*) As to the effect of such a charge, see L. P. Act, 1925, s. 87. The charge, if registered as a land-charge, must be cancelled.

XII.

CONVEYANCE *of* FREEHOLDS *by* MORTGAGOR *and* MORTGAGEE (*a*) *to a* PURCHASER *the* MORTGAGE *having been made* BEFORE 1926. VARIATIONS *where there have been a* TRANSFER *and* FURTHER CHARGE, *and other dealings with the* MORTGAGE; *also where* PART *of the* PURCHASE-MONEY *is paid to the* MORTGAGEE, *in part discharge of the* MORTGAGE DEBT, *and where the* WHOLE *of the* PURCHASE-MONEY *is paid to the* MORTGAGOR. FULL FORM (*b*).

Recitals.

PARTIES, A., *mtgor*, 1; B., *mtgee*, 2; C., *pchaser*, 3. *Recite mtge in fee of freehds*, p. 445; [*transfer & further charge, if any*, p. 447]: AND WHAS by virtue of the Law of Ppty Act, 1925, all the ppty comprised in the recited mtge & transfer has become vested in the sd A. as este owner in respt of the fee simple throf subjt only to a term of 3,000 yrs from the 1st day of Jany, 1926, by virtue of the sd Act vested in the sd B. subjt to cesser throf on paymt to the sd B. of the sd sum of £—— & intt thron on a day now past, *or* "by way of mtge for securg paymt to the sd B. of the sd ppal sum of £—— & intt thron." *Recite state of mtge debt*, p. 476 (*c*); *contract for sale*, p. 471, f. **1**;

Discharge of equitable mortgages.

(*a*) If the mortgage is equitable only, it may and should (in order to keep it off the title) be discharged by a simple receipt on the deed or memorandum of charge, and the property conveyed as unincumbered: see Vol. 2, p. 261, note (*b*).

As to notice of second mortgage.

A first mortgagee who has notice of a second mortgage, and concurs with the mortgagor in selling the property, and allows him to receive the balance of the purchase-money, is liable to the second mortgagee to the extent of such balance, see *West London Commercial Bank* v. *Reliance, &c., Society*, 29 Ch. D. 954; Vol. 2, p. 91, note.

(*b*) It is thought that the shorter form given, *ante*, p. 539 (Prec. XX.), which is more in accordance with the new scheme of conveyancing will suffice in most cases. The form in the text which in construction differs little from that formerly adopted in like cases is here retained chiefly for the purpose of showing the variations referred to in the head note.

Variation where mortgagee receives no part of purchase-money.

(*c*) If part of the purchase-money is to be paid to the mortgagee in part discharge of the mortgage, this recital will run, "WHAS the sd sum of £—— togr with the sum of £—— for intt thron from the —— day of —— remains owing to the sd B. on the secy of the sd indre of," &c. If no part is to be so paid the recital will state that the principal with "some intt" is due (or it may be omitted), but it is better to insert the exact amount.

agrmt of mtgee to join, p. 476: NOW THIS DEED WITNESSETH that in psuance of the recited agrmt & in conson of the sum of £—— now pd by the sd C., at the request (*d*) of the sd A. in mner followg (namely) the sum of £—— pt throf to the sd B. in full discharge of the moys owing to him under the sd mtge secy as afsd (the rect whrof the sd B. hby acknowes) & the sum of £—— residue throf to the sd A. (the receipt & paymt in mner afsd of wch respve sums, makg togr the sd pchase-moy of £——, the sd A. hby acknowes), the sd A. as benefl owner hby grants & the sd B. as mtgee (*e*), by the direction of the sd A., & to the intent that the mtge term shl merge in the freehd reversion of the ppty hby assured hby assns, surrs & releases (*f*) unto the sd C., *Parcels*, pp. 480 *et seq.*; *habendum to C. in fee simple*, p. 500, f. **2** (*g*). [*Acknowmt & undertakg as to munimts by A.* (*h*), p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c. (*i*).

Witnesseth.

Consideration.

Grant.

Habendum.

[*Schedule of Muniments.*]

(*d*) If part of the purchase-money is to be paid to the mortgagee in part discharge of the mortgage, the consideration will be "In conson of the sum of £—— now pd by the sd C., by the direction of the sd A., in mner followg (namely) the sum of £——, pt throf to the sd B., in discharge of the sum of £—— so due to him for intt, & in pt discharge of the sum of £—— so due to him for ppal as afsd (the rect, &c.), & the sum of £——, the residue throf to the sd A. (the rect, &c.)." If no part is to be so paid say, "in conson of the sum of £—— pd by the sd C. to the sd A., with the consent of the sd B. (the rect whrof the sd A., & the paymt whrof in mner afsd the sd B., hby acknowes), & of the premes."

Variation where mortgagee receives some or no part of purchase-money.

(*e*) See *ante*, pp. 507 *et seq.* and 511 *et seq.*

(*f*) Trustee mortgagees have power to release part of their security upon receipt of the whole of the purchase money produced thereby: *Re Morrell & Chapman*, [1915] 1 Ch. 162.

(*g*) See note (*d*), *ante*, p. 541.

(*h*) If B. is not fully paid off and retains the deeds, insert instead of an acknowledgment and undertaking by A, an acknowledgment by B, but without any undertaking, see *ante*, p. 515, note (*d*). As to whether the mortgagee is bound in that case to give an acknowledgment, see *Yates* v. *Plumbe*, 2 Sm. & G. 174; Dart., 7th ed., 697; Williams, V. & P., 3rd ed., 648. Where the mortgagee declines to give an acknowledgment the mortgagor must give a covenant for production, *Re Pursell & Deakin*, [1893] W. N. 152. In either case the mortgagor must covenant for safe custody, see *ante*, p. 516, f. 4.

As to muniments.

(*i*) With regard to the stamp on a conveyance by mortgagor and mort-

As to

XIII.

CONVEYANCE *of* FREEHOLDS *by a* MORTGAGOR *and* EXECUTORS *of a* MORTGAGEE *who died* BEFORE 1926. VARIATION *in* NOTE *for the case of a* MORTGAGEE *dying* AFTER 1925 (*k*).

Recitals. *PARTIES*, A., *mtgor*, 1; B. & C., *exors. of mortgee*, 2; D., *pchaser*, 3. *Recite mtge in fee of freeholds*, p. 443, f. **1**: AND WHAS the sd X. died on the —— day of —— havg by his will dated, &c.; *continue apptmt of exors & probate as in* f. **6**, p. 458. AND WHAS by the effect of the transonal provons of the Law of Ppty Act, 1925, the sd A. became & is now the este owner in respt of the fee simple fo the ppty hby assured: AND a term of 3000 yrs from the 1st day of Jany, 1926, in the same ppty created by the sd Act became & is now vested in the sd B. & C. witht impeachmt of waste by way of mtge for securg paymt to them of the sum of £—— with intt thron as in the sd mtge is expressed: *State of mtge debt*, p. 476, f. **23**; *contract for sale*, p. 471, f. **2**; *agrmt of exors to join*, p. 476, f. **24**: NOW THIS

Witnesseth.

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stamp duty on conveyance by mortgagor and mortgagee.

gagee, it may be observed that the deed is not treated as chargeable with "reconveyance" duty in addition to the *ad valorem* sale duty, although if the mortgage were released by a separate deed or discharged by endorsed receipt (see L. P. Act, 1925, s. 115 (5)), the extra duty would be incurred. It may also be mentioned, that if part only of the property in the mortgage is released by a separate deed, it is liable only to a 10*s.* deed stamp, the full reconveyance duty being payable on the final release: *Munro* v. *I. R. Commrs.*, [1896] W. N. 149; and see Alpe, 18th ed., pp. 201, 202.

(*k*) Where the mortgagee has died since 1925 the conveyance may be made to commence with a recital of the title of A. to the freeholds, p. 462, f. **1**, and will continue with recitals of title to the mortgage term as follows: "AND WHAS under or by virtue of a mtge dated, &c., & made, &c., & by the effect of the transonal provons of the Law of Ppty Act, 1925, a term of 3,000 yrs from the 1st day of Jany, 1926, created by the sd Act in the ppty hby assured became vested in the sd X. by way of mtge for securg paymt to him of the sum of £—— with intt thron as in the sd mtge is expressed.

"AND WHAS the sd X. died on the —— day of —— havg by his will, &c.: *continue apptmt of exors & probate; state of mtge debt, &c., as in the text.*

DEED WITNESSETH that in psuance of the recited agrmt & in conson, &c., *as in Prec.* XII. the sd A. **as benefl owner** hby grants & the sd B. & C. **as mtgees** & to the intent that the sd mtge term of 3,000 yrs shl merge in the freehd of the ppty hby assured hby assign surr & rele to the sd D. ; *Parcels*, p. 480 ; *habendum unto the sd D. in fee simple*, p. 500, f. **2**. [*Acknowmt & undertakg as to munimts by A.*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

[*Schedule of Muniments.*]

XIV.

ASSIGNMENT *of* LEASEHOLDS *by* MORTGAGOR *and* MORTGAGEE *to a* PURCHASER. *Concise Form applicable whether the* MORTGAGE *was made before or after the commencement of the* LAW *of* PROPERTY ACT, 1925 (*a*).

PARTIES, A., *mtgor*, 1 ; B., *mtgee*, 2 ; C., *pchaser*, 3. *Recite title to leaseholds*, p. 463, f. **4**, *describg the term assned as* "the head term": AND WHAS under or by virtue of a mtge by demise [assnmt] dated, &c., & made, &c. [& a transfer & fur charge throf dated, &c., & made, &c] [*if the mtge was by assnmt say* " & of the transitional provons of the Law of Ppty Act, 1925] a derivative term in the same ppty created by the sd mtge [Act] for all the residue of the head term except the last —— [ten] days throf (hrinar called the Recitals.

(*a*) Every mortgage of leaseholds created by assignment before 1926 was converted by Part VIII. of the First Schedule of the L. P. Act, 1925, into a mortgage for a term of years equal to the term assigned less the last ten days thereof subject to a provision for cesser corresponding to the right of redemption previously existing with respect to the term assigned. Subsequent mortgages by assignment are converted into terms one day longer than the term vested by the Act in a prior mortgagee, if the length of the last-mentioned term permits, or in any case for a term less by one day than the term assigned. As in the case of freeholds all the mortgage terms will be legal terms with the same restriction upon the benefit accruing from their statutory conversion. The term assigned will become vested subject to the mortgage term in the mortgagor or other person entitled to have the term assigned or surrendered to him upon the discharge of the mortgage debt.

mtge term) is now vested in the sd B. subjt to a provo for cesser throf on paymt to the sd B. of the sum of £—— with intt for the same on a day now past *or* " by way of mtge for securg paymt to the sd B. of the sum of £—— with intt thron as thrin expressed " : *Recite state of mtge debt*, p. 476, f. **23** ; *Contract for sale*, p. 471, f. **2** ; *Agrmt of mtgee to join*, p. 476, f. **24** : NOW THIS DEED WITNESSETH that in psuance of the recited agrmt & in conson of the sum of £—— now pd by the sd C. at the request of the sd A. in mner follg (namely) the sum of £—— pt throf to the sd B. (the rect whrof the sd B. hby acknowes) & the sum of £—— residue throf to the sd A. (the rect & paymt in mner afsd of wch respve sums makg togr the sd pchase moy of £—— the sd A. hby acknowes) the sd A. **as benefl owner** hby assns & the sd B. **as mtgee** by the diron of the sd A. & to the intent that the sd mtge term may merge in the head term hby assns & surrs : *Parcels by refce to lease in Schedule*, p. 485, f. **17** ; *habendum to C.*, p. 504, f. **16** *mutatis mutandis* : [*statemt as to value*, p. 525]. IN WITNESS, &c.

Wit-nesseth.

Assign-ment.

Schedule.

XV.

CONVEYANCE *of* LEASEHOLDS *by* MORTGAGOR *and* MORTGAGEE *to a* PURCHASER, *the* MORTGAGE *having been created after* 1925 *by* CHARGE *by way of* LEGAL MORTGAGE (*a*).

Recitals. *PARTIES*, A., *mtgor*, 1 ; B., *mtgee*, 2 ; C., *pchaser*, 3. *Recite title to leaseholds*, p. 463, f. **4**. AND WHAS by a charge dated, &c., & made, &c., & expressed to be by way of legal mtge the ppty comprised in the sd lease was charged by the sd A. with paymt to the sd B. of the ppal sum of £—— with intt thron at the rate thrin mentd ; *Recite state of mtge debt*, p. 476, f. **23** ; *Contract for sale*, p. 471, f. **2** ; *Agrmt by mtgee to join*, 476, f. **24** : NOW THIS DEED WITNESSETH that in psuance of the recited agrmt & in conson, &c., *as in last Precedent* the sd A. **as benefl owner** hby assns & the sd B. **as mtgee** by the diron of the sd A. hby assns & releases unto the sd C. : *Parcels by refce to lease in*

Wit-nesseth

(*a*) As to the effect of such a charge, see L. P. Act, 1925, s. 87 (1). The charge, if registered as a land-charge, must be cancelled.

Schedule, p. 485, f. **17** ; *habendum to C. discharged from the legal charge*, p. 505, f. **17**. [*Statemt as to value*, p. 525.] IN WITNESS, &c.

Schedule.

XVI.

ASSIGNMENT *of* LEASEHOLDS *by* MORTGAGOR *and* MORTGAGEE *to a* PURCHASER *where the* MORTGAGE *was by* DEMISE. VARIATION *for* MORTGAGE *by* ASSIGNMENT *made* BEFORE 1926. FULL FORM.

PARTIES, A., *mtgor*, 1 ; B., *mtgee*, 2 ; C., *pchaser*, 3. *Recite lease*, p. 451 ; *mtge*, p. 444, f. **18**, *omittg in the case of a mtge by assignmt the words* " except the last day throf " ; *Devolution of title to mtge if necessary* (*a*), p. 448, f. **32** ; *Contract for sale of lease*, p. 471 ; *State of mtge debt*, p. 476 ; *Agrmt of mtgee to join*, p. 476 : NOW THIS DEED WITNESSETH that in psuance of the recited agrmt & in conson of the sum of £——, now pd by the sd C. at the request of the sd A., in mner followg (namely) the sum of £—— pt throf to the sd B. (the receipt whrof the sd B. hby acknowes) & the sum of £——, residue throf to the sd A. (the receipt & paymt in mner afsd of wch respective sums, makg togr the sd pchase-moy of £——, the sd A. hby acknowes) the sd A. **as benefl owner** hby assns, & the sd B. **as mtgee**, by the diron of the sd A. & to the intent that the mtge term may merge in the head term hby assns & surrs unto the sd C. *Parcels by refce to lease*, p. 485, f. **17** ; *habendum to C.*, p. 504, f. **16**. [*Statemt as to value*, p. 525.] IN WITNESS, &c.

Recitals.

Witnesseth.

Schedule.

(*a*) If the mortgage was by assignment recite the devolution of title down to the year 1926, and continue : " AND WHAS by the effect of the Law of Ppty Act, 1925, the sd mortgaged ppty became & is now vested in the sd A. for all the residue of the term for wch the same was assned by the sd mtge subjt to a derivative term for the residue less the last ten days throf wch last mentd term was by the sd Act vested in the sd B. [in the sd —— & by a transfer throf dated, &c., & made, &c., is now vested in the sd B.] subjt to a provon for cesser throf correspondg with the right of redemption then subsistg under the sd mtge."

XVII.

CONVEYANCE *of* FREEHOLDS, ENFRANCHISED COPYHOLDS, *and* LEASEHOLDS *with the concurrence of* FIRST AND SECOND MORTGAGEES *of the* FREEHOLDS, *the* LATTER *being also* MORTGAGEES *of the enfranchised* COPYHOLDS *and* LEASEHOLDS *where both* MORTGAGES *were made* BEFORE 1926 (*a*).

Recitals. *PARTIES*, A., *vendor*, 1 ; B. & C., *first mtgees of freehds*, 2 ; D., *second mtgee of freehds, & mtgee of enfranchised copyhds & leasehds*, 3 ; E., *pchaser*, 4 : WHAS the sd A. is the este owner in respt of the fee simple of the ppty described in the First Schdle hto subjt as to the ppty described in the Second Part of the same Schdle (wch last mentd ppty was formerly copyhd of the manor of —— (*b*)) to the manorial incidents affectg the same & to the rights of the lord of the sd manor reserved on the enfranchisemt throf : AND is also the este owner of the leasehd ppty described in the Second Schedule hto in respt of the term of —— yrs from the —— day of —— for wch the same is now held at a yrly rt of £—— under a lease dated, &c., & made, &c. : AND WHAS under or by virtue of a mtge dated, &c., & made, &c., & by the effect of the transitional provons of the Law of Ppty Act, 1925, a term of 3,000 yrs from the 1st day of Jany, 1926, created by the sd Act & limited out of the fee simple of the ppty described in the First Part of the sd First Schedule hto is now vested in the sd B. & C. witht impeachmt of waste by way of mtge for securg paymt to them of the sum of £—— with intt thron as in the sd mtge is expressed : AND WHAS under or by virtue of a mtge dated, &c., & made, &c., & by the effect of the transitional provons of the Law of Ppty Act, 1925, a term of 3,000 yrs & one day from the 1st day of Jany, 1926, witht impeachmt of waste created by the sd Act & limited out of the fee simple of the ppty described in the First Part of the sd First Schdle hrto & a term of 3,000 yrs from the 1st day of Jany, 1926, witht im-

(*a*) This conveyance must be produced to the steward of the manor for indorsement within six months of execution, otherwise it will become void so far as regards the grant of the legal estate in the enfranchised copyholds : L. P. Act, 1922, s. 129 (1), (2) and (3).

(*b*) The enfranchised copyholds will have become vested in the mortgagor by virtue of the L. P. Amend. Act, 1924, Second Schedule, paragraph 4 (2).

peachmt of waste created by the sd Act & limited out of the fee simple of the ppty described in the Second Part of the sd First Schedule hto (*c*) & a derivative term created by the sd Act & limited out of the sd term of —— yrs in the leasehd ppty described in the Second Schdle hto for all the residue except the last ten days of the sd last mentioned term are now vested subjt as to the sd term of 3,000 yrs & one day to the term of 3,000 yrs so vested in the sd B. & C. as afsd, in the sd D. by way of mtge for securg paymt to the sd D. of the sum of £—— with intt thron as expressed in the sd mtge; *Contract for sale*, p. 471, f. **2**; *State of mtge debts, ppal due with* "some intt," p. 476; AND WHAS it has been agrd that the whole of the sd pchase-moy shl be pd to the sd A., & that the sd B. & C., & also the sd D., shl concur in these psnts in mner hrinar appearg: NOW THIS DEED WITNESSETH as follows :— Witnesseth.

1. IN psuance, &c., & in conson of the sum of £—— now pd by the sd E. to the sd A. with the consent of the sd B. & C. & also of the sd D. (the rect, &c.), & in conson of the premes the sd A. **as benefl owner** hby grants & they the sd B. & C., **as mtgees**, at the request of the sd A. & to the intent that the sd mtge term of 3,000 yrs so vested in them as afsd shl merge in the freehd reversion of the ppty hby assured hby assn surr & release & the sd D., **as mtgee**, at the request of the sd A., & to the intent that the sd mtge term of 3,000 yrs & one day so vested in him as afsd shl merge in the freehd reversion of the same ppty, hby assns, surrs & releases unto the sd E., *freehd parcels described in 1st part of 1st schedule*, pp. 480 *et seq.*; *habendum to E. in fee simple*, p. 500, f. **2**.

2. In fur psuance, &c., & for the conson afsd the sd A. **as benefl owner**, hby grants & the sd D. at the request of the sd A. & to the intent that the sd mtge term of 3,000 yrs so vested in him as afsd shl merge in the freehd reversion of the ppty hby assured hby assns, surrs & releases unto the sd E. *enfranchised copyhds described in 2nd pt of 1st schedule*; *habendum* to E. in fee simple, subjt to the manorial incidents affectg the same & to the rts of the lord of the sd manor in or to any mines or minerals in or under the sd land & the sportg & other rts affectg the same preserved by the Ppty Acts, 1922 & 1924.

3. IN fur psuance, &c., & for the conson afsd, the sd A. as

(*c*) See the L. P. Act, 1922, Twelfth Schedule, paragraph (1) (*f*); and L. P. Act, 1925, First Schedule, Part VII., paragraph 5.

benefl owner, hby assns, & the sd D., as mtgee, at the request of the sd A. & to the intent that the sd derivative mtge term of —— yrs less ten days shl merge in the sd head term of —— yrs hby assns, surrs & releases to the sd E., *assnmt of leasehds to E., for residue of term*, p. 507, f. **16**.

[**4**. *Acknowmt by B. & C., & by D. as to munimts retained by them resply*, p. 515.]

[**5**. *Statement as to value*, p. 525.]

In witness, &c.

First Schedule above referred to.

First Part.

(*Description of ppty originally freehold.*)

Second Part.

(*Description of ppty formerly copyhd.*)

Second Schedule above referred to.

(*Description of leasehd ppty.*)

[Third Schedule above referred to

(*Muniments of title*).]

XVIII.

CONVEYANCE *of* Freehold Land *by* Mortgagor *and* Mortgagee *in consideration of a* Rent-charge, *which is substituted as security* (*d*).

Parties. A., *mtgor* (hrinar called the vendor), 1; B. & C., *mtgees* (hrinar called the mtgees), 2; D., *pchaser* (hrinar called

Recitals. the pchaser), 3. *Recite mtge & effect of L.P. Act*, 1925, p. 444, f. **17**; *State of mtge debt*, p. 476, f. **23**; *Agrmt for sale*, p. 471,

(*d*) This saves the expense of a new mortgage of the rent-charge; the stamp will not exceed 10*s*.: Rev. Act, 1903, s. 7.

In the absence of special stipulation the title deeds would, on the execution of this deed, belong to the purchaser. The mortgagee will, however, probably decline to concur unless he is allowed to retain them, especially as he will require the original mortgage deed for the purpose of showing what right he has over the new rent-charge. The better plan will be to execute the present deed in duplicate, to hand one part to the purchaser, the other to the mortgagee, and for the mortgagee to retain all the deeds in his possession. If not so retained the mortgage would require registration as a land-charge under the Land Charges Act, 1925, ss. 10, 13.

f. **1**, *statg the rent charge as the conson for the sale :* And whas it has been agrd that the sd rent-charge shl be substituted for the ppty hby assured as a secy to the mtgees for the moys secd by the sd mtge in mner hrinar appearg : And whas upon the treaty for the sd sale it was agrd that this deed shd be executed in duplicate & that one copy throf shd be delivered to the pchaser & the other to the mtgee, & that the mtgee shd retain the documts of title specified in the schdle hto, & that the provons hrinar contained concerng the documts shd be contained hrin : NOW THIS DEED WITNESSETH as follows :— Agreement for substitution of rent-charge. Witnesseth.

1. In conson of the yrly rent of £——, hrinar limited, & of the covts & provons hrinar contained, & on the pt of the pchaser to be pformed & observed, the vendor, **as benefl owner**, hby grts & conveys, & the mtgees, **as mtgees**, at the request of the vendor, & to the intent that the sd mtge term of 3,000 yrs shl merge in the freehd reversion of the ppty hby assured hby surr & release unto the pchaser, *Parcels*, p. 480 ; *Habendum*, Unto the pchaser in fee simple, p. 500, Reserving nevertheless out of the ppty hby granted to the vendor in fee simple a yrly rent-charge of £—— to commence from the date of this deed & to be for ever charged upon & issuing out of the ppty granted & paid by equal half-yrly paymts witht any deductn except for ppty or income tax on the —— day of —— & the —— day of — in every yr. Grant.

2. The pchaser hby covts with the vendor that he the pchaser or his succors in title will henceforth pay to the vendor or his succors in title the sd yrly rent-charge of £—— at the times & in manner hrinbfe appointed for the paymt throf free from all deductns except as afsd. Covenant for payment of rent-charge.

3. The vendor, **as benefl owner**, hby charges by way of legal mtge the sd yrly rent-charge of £—— with the paymt to the mtgees of the ppal moy secd by the sd mtge to the intent that the same rent-charge shl be substituted for the ppty hby assured as a secy to the mtgees, for the ppal moys & intt secd by the sd mtge, & shl be subjt to the like right of redmon & the like power of sale, & other powers & provons for securg the paymt of the sd ppal moys & intt, as the ppty hby assured was subjt to immedly bfe the execution of these psnts, with such modifications as the case may require. Rent-charge substituted as security.

4. It is hby agrd, that until notice to the contrary from the Receipt

of vendor to be sufficient.

mtgees, or their succors in title, to the pchaser or his succors in title, the receipt of the vendor, or his succors in title, for the sd rent-charge hby limited, shl be a sufficient discharge to the pson or psons payg the same.

5. *Acknowmt by mtgees to pchaser as to munimts retained*, p. 515.

6. Provd always, that so long as any right of redmon shl subsist under this deed, all costs & expses incurred by the mtgees, or their succors in title, in the performce of any obligon imposed by the acknowmt hrinbfe contd shl, immedly on the same being so incurred, be charged on the sd rent-charge in his or their favour, togr with intt thron from the time when the same shl be pd by him or them, at the rate of £5 p.c. p.a., payable on the respve days hrinbfe appted for paymt of the sd rent-charge, & shl be repaid by the vendor to the mtgees, or their succors in title (togr with such intt as afsd), on demand, & if they shl not be so pd the power of sale vested in the mtgees by virtue of the recited mtge this deed & the statute in that behalf shl immedly become exercisable.

7. Provd always, that on discharge of all the moys for the time being owing on this secy, the mtgees, or their succors in title, shl hand the documts of title specified in the schdle hto to the pchaser, or his succors in title, & shl hand this deed to the vendor, or his succors in title : And the pchaser hby covts with the vendor that he, the pchaser, or his succors in title will, as soon as the sd documts specified in the schdle hto shl have been delivered to him or them at the costs of the vendor, or his succors in title, execute & deliver to the vendor, or his succors in title, a pper acknowmt for the production & furnishg copies of such documts & an undertakg for the safe custody throf. [*Statemt as to value*, p. 525 (*a*).] In witness, &c. (*b*).

[*Schdle of munimts.*]

(*a*) See *ante*, p. 525, note (*b*).

(*b*) It is desirable to endorse notice of this deed on the mortgage deed if retained by the mortgagee.

XIX.

CONVEYANCE *of* FREEHOLDS *by a* MORTGAGEE *under the* STATUTORY POWER (*a*). VARIATIONS *in* NOTE *where the* SALE *is by a* TRANSFEREE *or the* EXECUTOR *of a* DECEASED MORTGAGEE (*b*).

PARTIES, A., *mtgee*, 1; B., *pchaser*, 2. WHAS by a mtge dated, &c., & made, &c., the ppty hby assured was assured by the sd X. to [the use of] the sd A. in fee simple by way of Recitals.

(*a*) See the L. P. Act, 1925, ss. 101 and 103–107 applying (with the exceptions of sub-s. (2) of s. 101 which applies only to mortgages executed after 1911) to mortgages by deed, whether legal or equitable, of any property real or personal (see the definitions of "property" and "mortgage" in s. 205), executed after 1881. The statutory provisions are subject in every case to the terms of the mortgage deed, by which they may be excluded, limited or varied. They may also be extended by the mortgage deed, and as so varied or extended will operate as if such variations or extensions were contained in the Act: L. P. Act, 1925, s. 101 (3) and (4).

Every conveyance on sale by a mortgagee, made after 1925, is to be deemed to have been made in exercise of the power of sale conferred by the Act, unless a contrary intention appears: L. P. Act, 1925, s. 104 (3); and a mortgagee so selling is empowered to give receipts for the purchase-money, and a purchaser upon any such sale, is fully protected against any irregularity (for want of notice or otherwise) in the sale (s. 104 (2)), except where he has express notice of it; see *Parkinson* v. *Hanbury*, L. R. 2 H. L. 1; *Selwyn* v. *Garfit*, 38 Ch. D. 273; *Re Tritton*, [1891] W. N. 194, and see Vol. 2, p. 51.

A mortgagee selling under the statutory power incident to a mortgage executed before the 1st of January, 1912, cannot, in the absence of an express extension of the power in the mortgage deed, grant an easement; but his conveyance may, if made after 1881, pass the rights mentioned in the L. P. Act, 1925, s. 62: *Born* v. *Turner*, [1900] 2 Ch. 211.

A mortgagee selling under the statutory power incident to a mortgage executed on or after the 1st of January, 1912, may impose, so far as the law permits, restrictive covenants or conditions for any purpose on the unsold part of the mortgaged property or on the purchaser, and any property sold, and may sell the mortgaged property or any part thereof, or any mines and minerals apart from the surface with or without a grant or reservation of rights, easements, &c., for building or other purposes in relation to the property remaining in mortgage or the property sold, and with or without an exception or reservation of mines and minerals, and with or without a grant or reservation of powers of working, easements,

(*b*) Where there has been a transfer made either before or after the commencement of the L. P. Act, 1925, it will be sufficient to recite the deed of transfer by which "the benefit of the sd mtge was transferred to the said A." If the original mortgagee is dead his death, the appointment by his will of the vendors as executors and probate of the will will be recited in the usual way.

mtge for securg the paymt to the sd A. of the sum of £—— with intt thron as thrin expressed (*c*), *Agrmt for sale*, p. 474, f. **14**:

&c., for or connected with mining purposes in relation to the property sold or retained, and with or without covenants by the purchaser to expend money on the land sold. L. P. Act, 1925, s. 101 (2).

A sale by a mortgagee of fixtures apart from the land is invalid: *Re Yates*, 38 Ch. D. 112; *Re Brooke*, [1894] 2 Ch. at p. 611; and see Vol. 2, p. 52.

As to the notice necessary to the exercise of the statutory power of sale see L. P. Act, 1925, s. 196, and Vol. 2, pp. 54, 324.

A mortgagee cannot sell to a trustee for himself: *Henderson* v. *Astwood*, [1894] A. C. 150. He may sell to one of several mortgagors: *Kennedy* v. *De Trafford*, [1897] A. C. 180; or to second or subsequent mortgagees: *Shaw* v. *Bunny*, 2 De G. J. & S. 468; *Kirkwood* v. *Thompson*, 2 De G. J. & S. 613; *Flower & Sons* v. *Pritchard*, 53 Sol. J. 178; and he may sell to a company of which he is a member; *Farrar* v. *Farrars, Ltd.*, 40 Ch. D. 395; but a sale by a friendly society to a member of the investment committee of the society, *Hodson* v. *Deans*, [1903] 2 Ch. 647, cf. *Martinson* v. *Clowes*, 21 Ch. D. 857, and by the mortgagee to a receiver appointed by the Court of property of which he was receiver, *Nugent* v. *Nugent*, [1908] 1 Ch. 546, have been held invalid.

A sale by a first mortgagee to the mortgagor lets in a second mortgagee: *Otter* v. *Lord Vaux*, 6 De G. M. & G. 638; and see *Platt* v. *Mendel*, 27 Ch. D. at p. 251; but a sale by the first mortgagee to the mortgagor's trustee in bankruptcy does not produce this effect, though it does not extinguish the right of the second mortgagee to redeem, see *Bell* v. *Sunderland Building Society*, 24 Ch. D. 618. See further as to the mortgagee's power of sale, Vol. 2, pp. 51 *et seq.*

(*c*) Having regard to the provisions of the L. P. Act, 1925, this recital affords sufficient material upon which to found the conveyance by the mortgagee which follows. Provided that the conditions stated in sub-s. (1) of s. 88 of the Act are fulfilled the conveyance by the mortgagee will under that sub-section operate to vest in the purchaser the fee simple in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured. The recited mortgage if it were made before 1926 by means of a conveyance in fee simple subject to redemption will have been converted by the Act into a mortgage of a term of 3,000 years; and if purported to be made after 1925 by means of a conveyance in fee simple subject to redemption will have operated as a mortgage of a term of 3,000 years from the date thereof: L. P. Act, 1925, s. 85 (2). In either of these cases therefore, and also in the case of a mortgage made by demise or by way of legal mortgage after the Act, the first condition of the sub-section, namely, that an estate in fee simple " has been mortgaged by the creation of a term of years absolute limited thereout " must have been fulfilled. The remaining condition, namely, that the mortgagee is selling under his statutory or express power of sale is fulfilled by s. 104 (3) of the Act which provides that a conveyance on sale by a mortgagee made after the commencement of the Act shall be deemed to have been made in exercise of the power of sale conferred by the Act unless a contrary intention appears. It follows that the above form of conveyance is equally applicable whether the mortgage was made before or after the commencement of the L. P. Act, 1925.

NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson, &c. (the receipt, &c.) the sd A., **as mtgee,** in exercise of the power for this purpose conferred on him by the Law of Ppty Act, 1925, & of every other power enablg him in this behalf hby grants & conveys unto the sd B.; *Parcels*, pp. 480 *et seq.*; *habendum to B. in fee simple*, p. 500, f. **2** (*d*). IN WITNESS, &c. Witnesseth.

XX.

ASSIGNMENT *of* LEASEHOLDS *by a* MORTGAGEE *under the* STATUTORY POWER (*e*).

PARTIES, A., *mtgee*, 1; B., *pchaser*, 2. *Recite lease*, p. 451, f. **42**: AND WHAS by a mtge dated, &c., & made, &c., the ppty comprised in the recited lease was demised [assned] by the sd X. to the sd A. for the residue of the sd term of —— yrs granted by the sd lease [except the last day throf] by way of mtge for securg the paymt to the sd A. of the sum of £—— with intt Recitals.

(*d*) See and compare the form of *habendum* in L. P. Act, 1925, Fifth Schedule, Form No. 4. The conveyance takes effect under s. 88 (1) of that Act which, in addition to providing that the conveyances shall operate to vest the fee simple in the purchaser, declares that the mortgage term or charge by way of legal mortgage and any subsequent term or charges shall merge or be extinguished as respects the land conveyed. It would appear, therefore, that except for the purpose of giving proper effect to the covenant implied by the vendor being expressed to convey as mortgagee, no *habendum* would be strictly necessary. In any case, it seems that the words "discharged from all right of redmon," etc., contained in the form in the schedule to the Act, are mere surplusage and may safely be omitted.

(*e*) The above conveyance takes effect under L. P. Act, 1925, s. 89 (1), which provides that where a term of years absolute has been mortgaged by the creation of another term of years absolute limited thereaft or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale, the conveyance by him shall operate to convey to the purchaser not only the mortgage term (if any) but also (unless expressly excepted with the leave of the court) the leasehold reversion affected by the mortgage, and that the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charge, shall merge or be extinguished. As any mortgage made by assignment before 1926 will have been converted by the transitional provisions of the L. P. Act, 1925, First Schedule, Part VIII., into a mortgage by demise, it follows that the form of assignment in the text is equally applicable whether the mortgage was made before or after the commencement of the Act. See, further, *ante*, pp. 553, 554, notes (*a*) and (*c*), in reference to the corresponding section 88 of the Act relating to the sale of freeholds by a mortgagee in exercise of his statutory power.

thron as thrin expressed ; *Agrmt for sale*, p. 474, f. **14** : p. 471, f. **3**, and NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson, &c. (the rect, &c.), the sd A. as mtgee in exercise of the power for this ppose conferred on him by the Law of Ppty Act, 1925, & of every other power enabling him in this behalf hby assns unto the sd B. all the ppty comprised in & demised by the recited lease ; *Habendum to B.* for all the residue now unexpired of the sd term of —— years granted by the sd lease. IN WITNESS, &c.

Witnesseth.

XXI.

CONVEYANCE *of* FREEHOLDS, LEASEHOLDS, *and* ENFRANCHISED COPYHOLDS *by a* MORTGAGEE *under the* STATUTORY POWER *of* SALE.

Recitals.

PARTIES, A., *mtgee*, 1 ; B., *pchaser*, 2. *Recite lease to* K., *mtgor of ppty described in the 2nd Schedule*, p. 451 ; *Mtge of freehds, enfranchised copyhds (then copyhds) & leasehds to* A., p. 446, f. **22** : AND WHAS the sd A. in exercise of the power for this ppose conferred on him by the sd mtge & the stat in that behalf has agreed with the sd B. for the sale & transfer to him of the este in fee simple of the ppty described in the First Schedule hto & the sd term of —— yrs granted by the recited lease out of the ppty described in the Second Schedule hto free from incumbces for the sum of £—— : NOW THIS DEED WITNESSETH as follows :—

Witnesseth.

1. IN psuance of the sd agrmt, & in conson, &c. (the rect, &c.) the sd A. **as mtgee**, in exercise of the power for this ppose conferred on him by the Law of Ppty Act, 1925, & every other power enablg him in this behalf, hby grts & conveys unto the sd B., *freehd & enfranchised copyhd parcels by refce to First Schedule*, p. 483 ; *Habendum to B. in fee simple*, p. 500, f. **2** ; subjt as to the ppty described in the 2nd pt of the sd schedule to the manorial incidents affectg the same & to the rts of the lord of the sd manor in or to any mines or minerals in or under the sd land & the sportg & other rts affectg the same preserved by the Ppty Acts, 1922 & 1924 (*a*).

Grant of freeholds, free from mortgage.

(*a*) As to the statutory provisions from which it must result that the enfranchised copyholds have become "mortgaged by the creation of a term of years absolute thereout" so as to comply with the conditions of L. P. Act, 1925, s. 88 (1) : see *ante*, p. 555, notes to Precedent XX. The conveyance must be produced to the steward of the manor for indorsement within six months of execution : L. P. Act, 1922, s. 129 (1), (2) and (3).

2. In further psuance of the sd agrmt, & for the conson afsd, the sd A., **as mtgee**, in exercise, &c., *as above*, hby assns unto the sd B. *leasehd parcels by refce to Second Schedule*, p. 483 ; *Habendum to B.*, for all the residue now unexpired of the sd terms of —— yrs granted by the recited lease.

[**3.** *Acknowmt by A. as to muniments*, p. 515.]

[**4.** *Statement as to value*, p. 525.]

In witness, &c.

[*Schedules.*]

XXII.

CONVEYANCE *of* Freeholds *by* Mortgagees *under a* Power *of* Sale. Concise *Form by* Supplemental Deed *without* Recitals (*b*).

Parties, A. & B., *mtgees* (hrinar called the vendors, 1 ; C., *pchaser* (hrinar called the pchaser), 2 ; suppl to a mtge dated, &c., & made, &c., WITNESSETH that in conson, &c. (the rect, &c.), the vendors, **as mtgees** in exercise of the power for this ppose conferred upon them by the Law of Ppty Act, 1925, & every other power enablg them in this behalf hby grt unto the pchaser, *Parcels*, pp. 480, *et seq.* ; *Habendum to pchaser in fee simple*, p. 500, f. **2.** [*Statemt as to value*, p. 525.] In witness, &c. Parties. Witnesseth.

XXIII.

ASSIGNMENT *of* Part *of* Property *in a* Lease *held at an* Apportioned Rent *by a* Mortgagee *under* Statutory Power *of* Sale ; *the* Rent *not having been* Legally Apportioned *and the* Mortgage *having been effected* Before 1926 *by* Demise *with a* Declaration *of* Trust *and* Power *to* Appoint *a* New Trustee *of the* Reversion (*c*).

Parties, A., *mtgee*, 1 ; B., *the person to be appointed trustee*, 2 ; C., *pchaser*, 3. *Recite lease to K*, p. 451, *describing the parcels* Recitals.

(*b*) See *ante*, p. 553, note (*a*).

(*c*) S. 89 of the L. P. Act, 1925, does not apply (sub-s. 6) where the mortgage term does not comprise the whole of the land included in the leasehold reversion, unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, *i.e.* legally apportioned with

as in the note thrto & defining the term as "the head term"; Assignmt to X. of pt of the leasehds at an apportioned rent, p. 452, f. **46**, *mutatis mutandis:* And whas by a mtge dated, &c., & made, &c., the ppty hby assned was demised by the sd X. to the sd A. for the residue of the head term except the last day throf (hrinar referred to as the mtge term) subjt to a provo for the redmon throf on paymt to the sd A. of the sum of £—— with intt thron on a day now past, *or* "by way of mtge for securg the paymt to the sd A. of the sum of £—— with intt thron as thrin expressed": And the sd X. thrby declared himself a tree of the reversion thrby reserved of the head term in the same ppty for the sd A. subjt to such equity as might for the time being be subsistg by virtue of the provo for redmon thrinbfe contd: And thrby authorised the sd A. to appoint a new tree, &c., *continue power to appoint a new tree of the reversion:* And whas the sd A. has agreed with the sd C. for

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the consent of the lessor or is of no money value or no rent is reserved, and unless the lessees' covenants and conditions have also been apportioned, expressly or impliedly.

On the other hand, if the contract is for the sale of a mortgage term and the mortgagee has power to convey the leasehold reversion, the contract will be deemed to extend to such leasehold reversion: L. P. Act, 1925, s. 42, although the last-mentioned section does not affect the right of a mortgagee of leaseholds to sell his mortgage term only if he is unable to convey or vest the leasehold reversion expectant thereon. Where, therefore, as in the case supposed in the text, s. 88 does not apply but the mortgagee has nevertheless power to vest the reversion in the purchaser he must do so by the appropriate means formerly adopted. Where there is a trust of the leasehold reversion but no power to appoint a new trustee thereof and no power of attorney enabling the mortgagee to convey the reversion, the case appears to fall within the saving clause (sub-s. 5) of s. 42; and the mortgagee will not, it is thought, be bound to proceed against the mortgagor in order to get in the outstanding legal reversion. In the last-mentioned case both the agreement for sale and the assignment would comprise only the mortgage term and such estate or interest in the head term as the mortgagee may be entitled to; and that form of assignment may, with advantage, be adopted, though power to appoint a new trustee be contained in the mortgage, in cases where there is no risk of forfeiture of the head lease owing to the inclusion therein of a condition for forfeiture on bankruptcy against which the Court will not relieve: see 57 Sol. J. 475.

If the mortgagee has an irrevocable power of attorney to assign the reversion to a purchaser, as will usually be the case where the mortgage is made after 1925, and comprises part only of the property included in the lease, and it is intended to take an assignment thereof, the mortgagor, if living, will be made a party to the deed which will be executed in his name by the mortgagee as attorney in that behalf. If the mortgagor be dead, the attorney will be made a party and will assign the reversion on his behalf.

the sale & transfer to him of the sd mtged ppty for all the este thrin subsistg under the head term for the sum of £——: AND WHAS upon the treaty for the sd sale it was agrd that the sd A. shd appt the sd B. to be tree of the sd reversion so reserved as afsd & that the same shd be vested in the sd B. accordgly, & that the sd B. shd concur in these psnts in mner hrinar appearg: NOW THIS DEED WITNESSETH as follows :— Witnesseth.

1. IN psuance of the sd agreemt, & in conson, &c. (the rect, &c.), the sd A., as mtgee, in exercise of the power vested in him by virtue of the sd mtge & the stat in that behalf & of every other power enablg him in this behalf hby assns unto the sd C., *Parcels* in full or by refce to Schedule, p. 483; *Habendum to* C. for all the residue now unexpired of the mtge term & all such este & intt in the head term as the sd A. is entitled to or has power to assn *free from rt of redmon*, p. 505, f. **18**. Assignment by mortgagee.

2. IN further psuance of the sd agrmt & for the conson afsd the sd A., in exercise of the power for this ppose given to him by the sd mtge & of every other power enablg him in this behalf, hby appts the sd B. to be a tree in place of the sd *mtgor* for the pposes of the sd mtge or such of the same pposes as are subsistg & capable of takg effect. Appointment of new trustee.

3. IN psuance of the statutory provon in this behalf the sd A. hby declares that ALL & singr the leasehd ppty hby assned shl vest in the sd B. for all the este & intt in the head term reserved & made subjt to the trusts declared by the sd mtge Upon the trusts applicable thrto by virtue of the sd mtge. Vesting declaration (*d*).

4. THE sd B., as tree, by the diron of the sd A. hby assns unto the sd C. ALL the este & intt whatsr of him the sd B. of & in ALL & singr the sd leasehd ppty so vested in him as afsd (*e*). Assignment by trustee.

5. THE sd C. hby declares that the unexpired residue of the mtge term shl merge in the unexpired residue of the head term. Declaration of merger.

[6. *Statement as to value*, p. 525.**]**

IN WITNESS, &c.

Schedule.

(*d*) The vesting declaration in the text is appropriate whether the declaration of trust contained in the mortgage extends to the excepted days only or to the whole of the head term.

(*e*) The reversion vested in the trustee by the preceding declaration may, if desired, be formally assigned by him to the purchaser by a separate deed subject to the apportioned rent and the covenants and conditions of the lease so far as applicable to the property assigned, and to the intent that the mortgage term may merge in the head term so assigned.

XXIV.

CONVEYANCE *by* SURVIVING MORTGAGEES *under a* POWER *of* SALE *of* LIFE INTEREST *in* REALTY *and* PERSONALTY *and* POLICIES (*a*).

Recitals. *PARTIES*, A. & B. *mtgees*, 1; C., *pchaser*, 2. *Recite mtge of life intt to A., B. & D.*, p. 446, f. **24** [& by the deed now in recital power was given, *&c., recite the clauses of the power of sale* (*if any*) *as in* f. **14**, p. 443, *& joint account clause, if any*]: AND WHAS in exercise & psuance of the powers & provons of the sd will of the sd Y., the ppty specified in the second pt of the sd first schdle hto have been sold, & the pchase-moys have been applied in the discharge of the incumbces specified in the second pt of the sd second schdle hto, & in the pchase of £—— Stk, in the names of L. & M., the psnt trees of the sd will: AND WHAS the ppty now subjt to the trusts declared by the sd will, & representg the ppty specified in the —— schdle to the hrinbfe recited mtge, is specified in the third schdle hto: *Recite death of D.*: AND WHAS the sd A. & B. have, in exercise of the power of sale conferred on them by the sd mtge [& the statute in that behalf], agrd with the sd C. for the sale to him for the sum of £—— of the ppty specified in the first pt of the sd first schdle hto, & the sd sum of £—— Stk, & any ppty wch, by virtue of the powers conferred by or provons contained in the sd will, may at any time hrafter be substituted for the same hds & Stk resply, subjt to the annuity, mtges, & charges specified in the sd first pt of the sd second schdle hto, for the residue now unexpired of the sd term of 99 yrs, if the sd K. shd so long live: And also the life intt of the sd K., in the annual income of the ppty, the parlars whrof are specified in the sd third schdle hto, & in the ppty wch, by virtue of the powers & provons of the sd settlemt, may hrafter be substituted for the same, & also the sevl pols

Sale of settled estates.

Investments of settled personalty.

Agreement for sale.

(*a*) As to the effect of an alienation by a tenant for life of real estate, of his life interest, on his powers under the S. L. Act, see *post*, pp. 585 *et seq.* Notice of this deed should be given to the trustees of the settlement, and to the insurance office pursuant to the Policies of Assurance Act, 1867. As to the effect of the statutory notice, see *Newman* v. *Newman*, 28 Ch. D. 674; *Re Weniger*, [1910] 2 Ch. 291; and as to the necessity of stamping the deed immediately, the Stamp Act, 1891, s. 118; 33 Sol. J. 3.

specified in the fourth schdle hto, & the moys assured thereby resply : NOW THIS DEED WITNESSETH as follows :— Witnes seth.

1. In psuance, &c., & in conson, &c. (the receipt, &c.), The sd A. & B., **as mtgees** in exercise of the power conferred on them by the sd mtge **[**& the statute in that behalf**]**, & of every other power in this behalf them enablg, do hby grt & Grant. assn unto the sd C. : First, All & singr the —— & ppty Free-holds. specified in the sd first pt of the first schdle hto : Secondly, All that the sd sum of £—— Stk : Thirdly, All & singr the ppty wch, by virtue of any of the powers or provons of the sd will of the sd Y., may at any time hrafter be substituted for the sd ppty specified in the first pt of the sd first schdle hto, or any pt throf, or for the sd sum of stk or any pt throf, and the rents, profits, & income of the same respective premes, first, secondly, & thirdly, hrinbfe mentd : To hold all the sd premes hby assned Unto the sd C., subjt Haben-dum. to the annuity, mtges, & charges specified in the sd first pt of the sd second schdle hto, for the residue now unexpired To pur-chaser. of the sd term of 99 yrs, if the sd K. shl so long live, free from all right & equity of redmon & from all claims & demands under the sd mtge.

2. In further psuance, &c., & for the conson afsd, the sd A. & B., **as mtgees**, in further exercise of the powers afsd, do resply hby assn unto the sd C. : First, All that the life Assign-ment. intt of the sd K., in the ppty specified in the sd third schdle hto, & in any ppty hrafter representg or substituted for the same, or any of them, or any pt throf resply, & the annual Person-alty. income of the same respective premes, & secondly, All those Policies. pols of assurce specified in the sd fourth schdle hto, & all moys assured by, or to become payable under the same resply : Haben-dum. To hold all the sd premes lastly hby assned Unto the sd C., To pur-chaser. absolutely, free & discharged, &c., *as above.*

[3. *Statement as to value,* p. 525.**]**

In witness, &c.

[*Four Schdles.*]

XXV.

CONVEYANCE *of* FREEHOLDS *subject to a* MORTGAGE (*b*).

Recitals. *PARTIES*, A., *vendor*, 1 ; B., *pchaser*, 2. WHAS the sd A. is the
Mortgage. este owner in respt of the fee simple of the ppty hby conveyed subjt only to a mtge dated, &c., & made, &c., whrby in conson of the sum of £—— pd by the sd C. to the sd A., the sd A. covenanted with the sd C. to pay to him on the —— day of —— then next, the sum of £—— with intt thron at the rate thrin mentd, & in case of default in paymt throf to pay him thrafter intt thron half-yrly as thrin expressed, and whrby a term of —— yrs in the same ppty created by the sd mtge *or* " by virtue whrof & of the transitional provons of the Law of Ppty Act, 1925, a term of 3,000 yrs from the 1st day of Jany, 1926, in the same ppty created by the sd Act " was [is now] vested in the sd C. by way of mtge for securg the paymt to him of the sd ppal sum & intt thron. *Recite state of mtge debt*, p. 476, f. **23** ; *Contract for sale subjt to the recited mtge*, p. 477, f. **26** NOW
Wit- nesseth. THIS DEED WITNESSETH that in psuance, &c., & in conson, &c. (the receipt, &c.) & in conson also of the covt hrinar contained on the pt of the sd B., the sd B., the sd A., **as benefl**
Grant. **owner**, hby grts unto the sd B., *Parcels*, p. 480 : *Habendum to B. in fee simple*, p. 500, subjt to the sd mtge term, & to the paymt of the sd ppal sum of £—— now owing as afsd upon the secy of the same term, & the intt now due, & henceforth to accrue due in respt throf. *Covenant by B. with A. to indemnify A. agst mtge debt*, p. 518. [*Statemt as to value*, p. 525.] IN WITNESS, &c.

(*b*) See Elph. Introd., 7th ed., 162, and the next Precedent. As to the right of the mortgagor to be indemnified by the purchaser against the mortgage debt, see *ante*, p. 518, note (*c*). The purchaser is under no personal liability to the mortgagee : *Re Errington*, [1894] 1 Q. B. 11. Notice of the conveyance should be given to the mortgagee : Dart, 7th ed., 713.

Stamp. As to the stamp, see the Stamp Act, 1891, s. 57 ; Fin. (1909–10) Act, 1910, s. 73 ; Alpe, 18th ed., 113, 132, 134.

XXVI.

CONVEYANCE *of* LEASEHOLDS *subject to a* MORTGAGE THE MORTGAGEE *concurring for the purpose of* RELEASING *the* VENDOR'S COVENANT *for* PAYMENT *of the* MORTGAGE DEBT, *and taking a* SUBSTITUTED COVENANT *from the* PURCHASER. VARIATION *where the* MORTGAGEE WAIVES *his* RIGHT *of* CONSOLIDATION *instead of releasing the* COVENANT (*c*).

Recitals.

Parties, A., *vendor*, 1; B., *mtgee*, 2; C., *pchaser*, 3. *Recite title to leaseholds*, p. 463, f. **4**: AND WHAS by a mtge dated, &c., & made, &c., in consn of the sum of £—— pd by the sd B. to the sd A. the sd A. covted with the sd B. to pay to him on the —— day of —— then next, the sum of £—— with intt thron at the rate thrin mentioned, & in case of default in

Consolidation of mortgages.

(*c*) On the subject of the consolidation of mortgages, and the risks to a purchaser of an equity of redemption arising from this doctrine, see Goodeve, R. P., 5th ed., 408; Elph. Introd., 7th ed., 162, 279; *Jennings* v. *Jordan*, 6 App. Cas. 698; *Harter* v. *Colman*, 19 Ch. D. 630; *Bird* v. *Wenn*, 33 Ch. D. 215; *Minter* v. *Carr*, [1894] 3 Ch. 498; *Pledge* v. *White*, [1896] A. C. 187; *Hughes* v. *Britannia, &c., Bldg Society*, [1906] 2 Ch. 607; *Sharp* v. *Rickards*, [1909] 1 Ch. 109. The right of consolidation was abolished where the mortgages, or one of them, were made after 1881, by the C. Act, 1881, s. 17 (now repeated in the L. P. Act, 1925, s. 93); but only if a contrary intention is not expressed in the mortgage deeds, or one of them, so that it cannot be certain that the mortgagee may not still have the right. If the mortgagee releases the vendor's covenant, no question of consolidation can of course arise. To complete the purchaser's protection as against a transferee of the mortgage (whether the covenant or the right of consolidation is released), notice of this deed should be endorsed on the mortgage.

Stamp.

This deed requires an *ad valorem* conveyance stamp on the amount of the purchase and mortgage moneys: see Stamp Act, 1891, s. 57; Fin. (1909–10) Act, 1910, s. 73; Alpe, 18th ed., 113, 132, 134: and on a conveyance subject to a mortgage to a building society, the consideration must include the sum for which the mortgage could be redeemed immediately. The deed is further chargeable with a 6*d. ad valorem* duty not exceeding 10*s.*: see Revenue Act, 1903, s. 7; on the mortgage money by reason of its containing a covenant by the purchaser with the mortgagee for payment of the mortgage debt and interest; see Alpe, 18th ed., 134.

Liability of equitable assign of a lease.

An equitable assign of a lease is not liable to the lessor in equity in respect of the lessee's covenants: *Cox* v. *Bishop*, 8 De G. M. & G. 815; *Bagot Pneumatic Tyre Co.* v. *Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. at p. 156; but he is liable in equity to indemnify the lessee in respect of breaches of covenant committed while he is in possession: *Close* v. *Wilberforce*, 1 Beav. 112.

paymt throf to pay to him thrar intt thron half-yrly as thrin expressed. And by the sd mtge a derivative term thrby created in the sd ppty for all the residue of the sd term of —— yrs less the last —— days throf (hrinar called the mtge term) was vested in the sd B. by way of mtge for securg the paymt to him of the sd ppal sum & intt thron; *State of mtge debt*, p. 467, f. **23**; And whas the sd A. as such este owner as afsd has agreed with the sd C. for the sale & transfer to him of his este in the ppty hby assned subjt to the sd mtge term & to the sd ppal sum of £—— & intt now due & hrar to accrue due thron wch are to be borne & pd, &c., *continue as in* f. **26**, p. 477;

Agreement for concurrence of mortgagee.

And whas it has been agrd that the sd B. shl release the sd A. & that the sd C. shl covt in mner hrinar appearg: *or* "that this deed shl contain the release to the sd C. hrinar appearg."

Witnesseth.

NOW THIS DEED WITNESSETH as follows:—

1. In psuance of the sd agrmt & in conson, &c., (the receipt, &c.), & in conson also of the release hrinar contained by the sd B. *or* "the covt hrinar contained by the sd C." the sd A. as benefl owner hby assns unto the sd C. *Parcels by reference to lease in schedule*, p. 485, f. **17**: *Habendum to C. subjt to rent & covts of the lease*, p. 504, f. **16**, *& to the mtge terms, see* p. 501, f. **5**, *saying* "& subjt to the mtge term & the ppal sum," &c.

[2. *Covenant by C. with A. to indemnify him against mtge debt, if not released by B.*, p. 518, f. **4.]**

Release of vendor from mortgage debt.

Covenant for payment of mortgage debt.

3. In conson of the covts on the pt of the sd C., hrinar contained, the sd B. hby releases the sd A., from the sd mtge debt of £——, & the intt thron (*a*): And in conson of the premes, the sd C. hby covts with the sd B., *covt for paymt of mtge moy & the intt thron from the —— day of —— last, & future intt, see* "Mortgages," *mutatis mutandis*, & also that he, the sd C., will duly pform & observe all the other covts by the sd A., in & by the sd mtge contained & implied (except the covts for title to & further assurce of the sd ppty).

Release of right of consolidation.

or, **3.** "The sd B. hby, at the request of the sd A. & C., releases to the sd C., all the rights of him the sd B., to consolidate any other mtge-debt or secy with the sd sum of £——, or the sd secy for the same, so as to charge the sd —— & ppty hby

(*a*) If necessary, add, "& the covts by the sd A. in & by the sd mtge contained & implied, except the covts for title to & further assurce of the premes."

assned with any sum or sums of moy other than the sd ppal sum of £——, & the intt thron."

4. Nothg hrin contained shl prejudice or affect the power of sale conferred by the sd mtge.

5. *Acknowmt by C. to A. of right of production, &c., of present deed*, p. 575.

[6. *Statement as to value*, p. 525.**]**

In witness, &c.

XXVII.

CONVEYANCE *of* Freeholds *subject to a* Mortgage *to the* Mortgagee (*b*) ; *the* Debt *being* Discharged (*c*).

Parties, A., *vendor*, 1 ; B., *mtgee & pchaser*, 2. Whas the sd A. is the este owner in respt of the fee simple of the ppty hby assured subjt only to a mtge dated, &c., & made, &c., whrby a term of —— yrs limited out of the fee simple of the same ppty was vested in the sd B. by way of mtge for securg the paymt to the sd B. of the sum of £—— with

Recitals Agreement.

(*b*) A mortgagee may purchase the right of redemption from the mortgagor, if there is no undue pressure or unfairness in the transaction : see 2 Dav. Prec., 4th ed., pt. 1, p. 294, note. The power formerly possessed by a mortgagee of harassing the mortgagor, and making it difficult for him to find a person to take a transfer of the mortgage, by refusing to produce the title-deeds, has been removed, where the mortgage was made after 1881, by the L. P. Act, 1925, s. 97.

Purchase of equity of redemption by mortgagee.

As to the stamp where the amount of the mortgage debt exceeds the value of the property, see Alpe, 18th ed., 134.

Stamp.

(*c*) Before 1926 it was usually advisable for a mortgagee on purchasing the equity of redemption in the mortgaged property, to keep the mortgage alive as a protection against possible concealed incumbrances of later date. See *Manks* v. *Whiteley*, [1912] 1 Ch. 735 ; S. C. *sub nom. Whiteley* v. *Delaney*, [1914] A. C. 132. As any such concealed incumbrance must now be a puisne mortgage and void for want of registration as against the purchaser, there is no longer any object in keeping the mortgage alive under such circumstances ; and it is accordingly provided by the L. P. Act, 1925, s. 116, that without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease.

intt thron as thrin expressed ; *State of mtge debt*, p. 476, f. **23** : AND WHAS the sd A. as such este owner as afsd has agrd with the sd B. for the sale & transfer to him of his este in the ppty hby assured subjt to the sd mtge term, in conson of the release by the sd B., hrinar contained & of the paymt by the sd B. to the sd A. of the sum of £——, makg with the sd sum of £—— so owing on the secy of the sd mtge as afsd the sum of £—— : NOW THIS DEED WITNESSETH as follows :—

Witnesseth.

1. IN PSUANCE, &c., & in conson of the sum of £—— now pd by the sd B. to the sd A. (the rect, &c.), & in conson also of the release hrinar contained by the sd B., the sd A. as beneft owner hby grts & releases unto the sd B., *Parcels*, p. 480 ; TO HOLD the same unto the sd B. in fee simple subjt to the sd mtge term but free from all rt or equity of redemption & from all claims & demands under the sd mtge.

Grant.

Release of mortgage debt (*a*)

2. IN CONSON of the premes the sd B. hby releases the sd A. from the sd sum of £—— owing on the secy of the sd mtge as afsd, & all intt to accrue due thron, & from all actions, proceedgs, claims, demands, & liability in respt throf or orwise under the sd mtge.

Declaration of merger.

3. THE SD B. hby declares that the sd mtge term shl forthwith merge in the fee simple of the sd ppty & be extinguished (*b*).

IN WITNESS, &c.

(*a*) A duplicate of the conveyance executed by the mortgagee should be delivered to the mortgagor, or the release of the debt might be by a separate instrument.

(*b*) This clause is strictly superfluous, as the term must necessarily merge on becoming satisfied.

XXVIII.

CONVEYANCE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVES *of a* DECEASED PERSON (*a*).

Rentals.

PARTIES, A., *&* B., *exors*, 1 ; *C.*, *pchaser*, 2. *Recite death & apptmt of exors & probate of will of X.*, p. 458, f. **6**, *or death & grant of admon*, p. 458, f. **7**. *Contract for sale*, p. 474, f. **13** :

Devolution of real estate on death.

(*a*) The Admin. of Estes. Act, 1925, provides (s. 1) that real estate to which a deceased person was entitled for an interest not ceasing on his death, which includes (s. 3 (1)) (i) chattels real and land in possession, remainder or reversion, and every interest in or over land to which the deceased was entitled at the time of his death ; and (ii) real estate held on trust (including settled land) or by way of mortgage or security, and (sub-s. 2) real estate over which a testator exercises by will a general power of appointment, shall on his death notwithstanding any testamentary disposition, devolve on his personal representative in like manner as, before the commencement of the Act chattels real devolved on the personal representatives.

Powers of personal representations.

For the purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, personal representatives have all the powers conferred by law upon trustees for sale, including power to overreach equitable interests & powers as if the same affected the proceeds of sale : Admin. of Estes. Act, 1925, s. 39 ; and these powers are by s. 8 made exercisable by the proving executors or executor for the time being, whether or not power is reserved to any other executor to prove. But all the proving executors must join in the conveyance : s. 2 (2).

Protection of purshasers.

A purchaser from a personal representative selling in exercise of his paramount powers is not affected by notice of any equitable interest overreached by the conveyance : L. P. Act, 1925, s. 2 (1) (iii) ; nor by notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for : Admin. of Estes. Act, 1925, s. 36 (8) ; and is not bound to see to the application of the purchase-money : L. P. Act, 1925, s. 27.

Operation of conveyance.

The operation of a conveyance on sale by a personal representative, in relation to any previous assent or conveyance, is provided for by s. 36 of the Admin. of Estes. Act, 1925. By sub-s. 5 of that section any person in whose favour an assent or conveyance of a legal estate is made by a personal representative, may require notice of the assent or conveyance to be endorsed on or permanently annexed to the probate or letters of administration. If no such notice is so endorsed or annexed, a conveyance by the personal representative to a purchaser (if taken by him on the faith of a statement in writing by the personal representative that he has not given or made an assent or conveyance in respect of a legal estate) is made to operate (sub-s. 6), as between the person failing to require the proper notice to be endorsed or annexed and the purchaser, but without prejudice to any other purchaser deriving title mediately or immediately under the personal representative, to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been

Wit-nesseth.

And whas the sd A. & B. have not previously to the execution of this convce given or made any assent or convce in respt of any legal este in the sd ppty: NOW THIS DEED WITNESSETH that in psuance, &c., *conson, receipt,* they the sd A. & B. as psonal repves of the sd X. deced, hby grant unto the sd C. *Parcels,* pp. 480 *et seq.; Habendum to pchaser in fee simple,* p. 500, f. **2.** [*Statemt as to value,* p. 525.] In witness, &c.

XXIX.

CONVEYANCE *by* Executors *of a* Will *to one of themselves of* Freeholds *purchased under a* Right of Pre-emption (*a*) *given to him by the* Will, *and of* Leaseholds *held for a* Long Term (*b*), *the duration of which is* Unknown, *with the* Concurrence *of the* Beneficiaries (*c*).

Recitals. Will.

Parties, A., B., *& C., exors & also beneficiaries,* 1; D. *& E., beneficiaries,* 2; C., *pchasing exor,* 3. *Recite will of X., con-*

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made. See this section further discussed in relation to title under an assent, *ante,* p. 456.

The general effect of the section and of s. 43 of the same Act is to obviate the difficulty formerly experienced by executors in making title to real estate in their capacity as personal representatives: see *Wise* v. *Whitburn,* [1924] 1 Ch. 460. Section 43 (1) provides that a personal representative, before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and that such possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to convey the land as if he were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

Right of pre-emption.

(*a*) As to the period within which a right of pre-emption of this kind must be exercised, see *Brooke* v. *Garrod,* 2 De G. & J. 62; *Austin* v. *Tawney,* L. R. 2 Ch. 143.

(*b*) It is here assumed that the power of enlarging a long term into a fee simple given by the L. P. Act, 1925, s. 153, cannot be acted upon owing to the impossibility of showing that the case falls within that section.

Purchase by trustees or executors of trust property.

(*c*) The conveyance is made by the executors in exercise of their statutory power and, subject to the provision contained in s. 72 (4) of the L. P. Act, 1925, will operate to transfer the legal estate expressed to be conveyed and to overreach equitable interests of which the purchaser may have notice in all respects as effectually as if it were made to a stranger instead of by the executors to one of themselves. S. 72 (4) provides that two or more persons (whether or not being trustees or personal representatives) may

taing general devise & bequest to A., B., & C., in trust for sale & division of proceeds after paymt of debts, &c., among his chln, A., B., C., D., & E., with option to testor's sons in succession according to seniority to pchase, " the freehd ppty hby grted," *at a valuon to be made by valuers to be nominated by trees, & appointg A., B., & C. exors—death & probate.* p. 457 ; AND WHAS Seisin of testator.

convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party ; provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside. In order that the conveyance may not appear, on the face of it, liable to be set aside under this section, it is necessary to show in recital that the conveyance is made in accordance with the equitable interests involved or that those interests are duly protected. As regards the freeholds which are conveyed according to the trusts of the will, the recital of the will is sufficient for this purpose ; but as regards the leaseholds, it must be shown that the sale is in substance a sale by the beneficiaries to the executor, carried out by the executors on behalf of the beneficiaries, and the concurrence of the beneficiaries for the purpose of acknowledging that this is the case is therefore necessary. The result, of course, is to bring the will on to the title, as is the case where trustees sell under a devise to them in trust for sale to which the executor's assent has been given before 1926, but this, in the circumstances, is unavoidable. As to purchases by trustees or personal representatives from themselves or their *cestuis que trust*, see Lewin, 12th ed., 568 ; Williams, V. & P., 3rd ed., 954. *Re Harvey*, 58 L. T. 449 ; *Williams* v. *Scott*, [1900] A. C. 499 ; *Dougan* v. *Macpherson*, [1902] A. C. 197 ; *Delves* v. *Gray*, [1902] 2 Ch. 606. As to purchases by trustees with the sanction of the Court, see *Tennant* v. *Trenchard*, L. R. 4 Ch. 537 ; *Farmer* v. *Dean*, 32 Beav. 327. As to purchases by a person who has ceased to be a trustee, see *Re Boles & British Land Co.*, [1902] 1 Ch. 244. As to the purchase of the testator's estate by an executor who has not proved, see *Clark* v. *Clark*, 9 App. Cas. 733. As to a purchase by a solicitor from his client, see *Wright* v. *Carter*, [1903] 1 Ch. 27; *Demerara Bauxite Co.* v. *Hubbard*, [1923] A. C. 673; from his client's trustee in bankruptcy, see *Luddy's Trustee* v. *Peard*, 33 Ch. D. 500; and as to a sale by a solicitor to his client, see *Moody* v. *Cox*, [1917] 2 Ch 71. As to the purchase by a person in a fiduciary relation on a sale under the Court, see *Coaks* v. *Boswell*, 11 App. Cas. 232. In every case of a purchase by a person in a fiduciary position from his *cestui que trusts* (except where the purchase is made, as in this precedent, under a special power), it is essential that the vendors and purchasers should have separate and independent advice, and a recital to this effect should be inserted : " AND WHAS the amt of the sd pchase-moy was ascertained by a valuon made by Messrs. —— on behalf of *the vendors* & by Messrs. —— on behalf of *the pchaser :* AND WHAS in the negotion & preparon of these psnts *the vendors* were advised by Messrs. —— solors, & *the pchaser* was advised by Messrs. —— solors."

the sd X. was at his death the owner in fee simple of the sd freehd ppty hby grted free from incumbces, & was also absolutely entitled to the piece of land hby assned, wch is of leasehd tenure, & (as is believed) free from rent & covts, & is held for a long term of yrs, but the origin & duration of such term are not known : AND WHAS the sd C. is the eldest son of the sd X. :

Valuation of freeholds.

AND WHAS in due course of admon of the este of the sd X. decd, the sd A., B., & C., appted K., of, &c., & L., of, &c., to value the sd freehd ppty, & the same was valued by them at the sum of £—— ; AND WHAS the sd A., B., & C., by writg under their hands, dated, &c., psuant to the directions of the sd will, duly offered the same ppty to the sd C. at the sd valuon price of £——, & the sd C., by writg, under his hand, dated, &c., *or*, " within the time in that behalf prescribed by the sd will," duly declared his desire to pchase the sd ppty for the sd sum of £——, & requested the sd A. & B. to join with him in conveyg the same to him psuant to the sd will : AND WHAS the sd A. & B., as such exors as afsd, with the approbon & concurrce of the sd D. & E., testified by their execon hrof, have also agrd with the sd C. for the sale to him of the sd leasehd ppty for the sum of £——, at wch the same has been valued by the sd K. & L., for the ppose of such sale, on the instructions of the sd A., B., D., & E., such valuon havg been made as if the sd premes were freehd : AND WHAS the sd A., B., & C. have not previously to the execon of this convce given or made any assent or convce in respt of any legal este in the ppty hby conveyed : NOW THIS DEED made for the ppose of givg effect to the sd respve agreemts WITNESSETH as follows :—

Offer and acceptance.

Agreement for sale of longterm.

Agreement to concur.

Witnesseth.

1. IN CONSON, &c., *pchase-moy for freehds*, now pd by the sd C. to the sd A., B., & C., with the approbon of the sd D. & E. (the receipt, &c.), they the sd A., B., & C., as psonal repves of the sd X. decd, & in exercise of the staty power conferred upon them in this behalf hby grt (*a*) unto the sd C., *Freehd Parcels*, p. 480, *habendum to C. in fee simple*, p. 500, f. **2**.

Grant.

2. IN CONSON, &c., *the pchase-moy for leasehds* now pd by the sd C. to the sd A., B., & C. at the request of the sd D. & E. (the receipt whrof the sd A., B., & C., & the paymt whrof the sd

(*a*) Instead of a release by A. & B. of their estate in joint tenancy to C. their co-tenant which would have been the usual method of effecting the transactions before 1926, the conveyance is now made by A., B., & C. to C. under s. 72 (4) of the L. P. Act, 1925. See note (*c*), *supra*.

D. & E. hby respvly acknowledge), the sd A., B., & C., as psonal repves of the sd X. decd, & in exercise of the staty power conferred upon them in this behalf hby assign unto the sd C., *Parcels*, p. 480: To HOLD the same UNTO the sd C., henceforth for all the term of yrs, este & intt for wch the same premes are now held (*b*). Assignment.

[3. The sd A. & B. as to their own respve acts & defaults only, & not those of each other, & so as to bind themselves & their repves resply only while havg the actual custody of the deeds & writgs hby covted to be produced, & so far as practicable, to bind such deeds & writgs into whosesoever hands the same may come, but not so as to incur any liability in relation thrto further or orwise, hby covt with the sd C. that they the sd A. & B. or one of them, their or some one of their succors & assigns will at all times hrafter unless prevented by fire or other inevitable accident upon every reasonable request & at the cost of the sd C. or his succors in title or any of them produce or cause to be produced to him or them, or his or their solor or agent, or such other pson or psons as he or they shl direct, or in the course of any judicial or other proceedgs or orwise as occasion shl require, all or any of the deeds & writgs mentd in the schdle hto, for the proof, defence, & support of the title & posson of the sd C. or his succors in title or any of them: AND will permit the same to be examined, inspected or given in evidence: AND will also at the like request & cost of the sd C. or his succors in title or any of them make & furnish or cause to be made & furnished to him or them such true, attested or other copies or abstracts or extracts from the same deeds & writ gs resply ashe or they may require: AND will keep the same deeds & writgs safe, whole, & uninjured, fire or other inevitable accident only excepted.] Covenant for production of documents of title.

(*b*) If there were any doubt as to the tenure, the conveyance should be framed so as to be effectual in either case.

(*c*) It is considered that a statutory acknowledgment would not be effectual in this case, as the documents are in the joint custody of A., B., & C., and the Act only applies where the acknowledgment is given by the person or persons in possession of the documents to another person, see *ante*, p. 514, note; and that even the addition of an express declaration that the acknowledgment is intended to operate according to the statute in the same manner as if the deeds were in the possession of the parties giving it, might not remove the objection, as it is doubtful whether it would be binding on third parties, to whom the deeds might be afterwards delivered. It is better, therefore, in this case to insert an express covenant. Acknowledgment.

[**4.** *Statement as to value*, p. 525.]
In witness, &c. (*d*).

[*Schedule.*]

XXX.

CONVEYANCE *by* Executors *of a* Will *to effectuate a* Contract *for* Sale *entered into by their* Testator *in his lifetime for the sale of* Freeholds *to the* Trustees *of a* Personalty Settlement *purchasing under a power to invest in land, the* Tenants *for* Life *under the* Settlement *being* Consenting Parties (*e*).

Parties.

Parties, A., B., & C., *exors of will*, 1; D. & E., his wife, *beneficiaries under settlemt*, 2; F. & G., *trees of settlemt*, 3;

Recitals.

Recite death & applmt of exors & probate of will of X., p. 458, f. **6**:

Contract for sale and request to convey.

And whas the sd F. & G., having recently contracted with the sd X. deced for the pchase from him of the este in fee simple of the ppty hby assured for the sum of £—— have with the approbation (hby testified) of the sd D. & E. requested the sd A., B., & C. to convey the sd ppty to them in mner & upon the trusts hrinar appearg (*f*).

Witnesseth.

NOW THIS DEED WITNESSETH that in psuance of the sd contract & in conson of the sum of £—— now pd by the sd F. & G., at the request of the sd D. & E., to the sd A., B., & C., as psonal repves of the sd X. deced (the receipt, &c.), the sd A., B., & C., as psonal repves, of the sd X. deced hby grt & convey unto the sd F. & G., *Parcels*, p. 480

Grant.

Stamp. (*d*) The stamp must be adjudicated.

Conveyance where vendor dies pending completion. (*e*) All the proving executors must join in the conveyance; see *ante*, p. 614. Executors have power, and are by the common law bound to carry into execution the contracts of their testator relating to personal estate: *Wentworth* v. *Cock*, 10 Ad. & El. 42; *Day* v. *Singleton*, [1899] 2 Ch. 320; and are now in the same position as regards contracts relating to real estate which has devolved upon them under s. 1 of the Admin. of Estes. Act, 1925. The provisions of the Conv. Act, 1881, s. 4, conferring upon personal representatives express power for this purpose are therefore no longer required and are not repeated in the L. P. Act, 1925.

(*f*) According to the usual and correct practice, the recital is framed so as not to disclose any trusts which might attach to the property purchased in priority to the trust for sale declared in the habendum as the paramount trust. It is apprehended that the vendor is not bound and that he is not at liberty to inquire whether the purchase is authorised by the trusts affecting the purchase-money, though he has the right to decline to execute a deed which to his knowledge contains incorrect recitals: *Hartley* v. *Barton*, L. R. 3 Ch. 365; or which shows on the face of it that the purchase-money is paid in breach of trust.

et seq.; *habendum to F. & G. in fee simple upon trust for sale & to hold proceeds of sale upon trusts of settlemt*, p. 503, f. **13**, *saying, if it is desired to distinguish btn the settled funds* " forming pt of the trust fund thby brought into settlemt on the pt of the sd D." *or E. as the case may be.* [*Statement as to value*, p. 525.] IN WITNESS, &c. (*a*).

XXXI.

CONVEYANCE *of* FREEHOLDS *under a* TRUST *for* SALE (*b*), *the* TENANT *for* LIFE *of the* PROCEEDS *of* SALE *being a* CONSENTING PARTY (*c*), A SHORT FORM, *without* RECITALS.

PARTIES, A. & B., *trees for sale* (hrinar called the vendors), 1; C., *tenant for life* (hrinar called the life tenant), 2; D., Parties.

(*a*) In districts where registration is compulsory, the trustees must be registered as proprietors, and if any consent is required to a sale by them a proper restriction must be entered. Land in compulsory district.

Where co-proprietors are registered as proprietors an entry must be made on the register to the effect that where the number of them is reduced to one no registered disposition is to be made without an order of the Registrar or of the Court, but this provision does not apply where it is shown to the registrar's satisfaction that the joint proprietors are entitled for their own benefit, or can give valid receipts for capital money, or that one of them is a trust corporation: L. R. Act, 1925, s. 58. The statutory restrictions affecting the number of persons entitled to hold land on trust for sale and the number of trustees of a settlement apply to registered land: L. R. Act, 1925, s. 95.

(*b*) A trust for sale of land, whether express or implied, is, so far as regards the safety and protection of any purchaser thereunder, to be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale: L. P. Act, 1925, s. 23; and see the definition of "land," *ibid.* s. 205 (1) (ix), and cf "trust for sale" in relation to land: *ibid.* s. 205 (1) (xxix). Duration of trust for sale.

There must be at least two trustees to execute the trust, unless the sole trustee is a trust corporation, and to whom the purchase-money must be paid: L. P. Act, 1925, s. 27 (2). Subject to this and to any consent necessary to the sale being obtained (see *infra*, note (*c*)), the conveyance to the purchaser will operate to overreach every equitable interest or power limited or, by a disposition in trust for sale under s. 2 (2) of the L. P. Act, 1925, or by the transitional provisions of the Act, made to take effect subject to the trust for sale: L. P. Act, 1925, s. 2 (1). The purchaser is not concerned with any directions respecting the postponement of the sale (s. 25 (2)), nor with the trusts affecting the proceeds of sale, whether or not those trusts are declared by the same instrument by which the trust for sale is created: *ibid.* s. 27 (1). Overreaching operation of conveyance in execution of trust. Purchaser's protection.

(*c*) S. 26 of the L. P. Act affords protection to the purchaser as regards Consents

Witnesseth.

pchaser (hrinar called the pchaser), 3 ; WITNESSETH that in conson, &c. (the receipt, &c.), & in psuance & execution of the trusts of a deed dated, &c., & made, &c., *the convce in trust for sale, or,* " the trusts declared by an assent dated, &c., & signed by the vendors [*or* L. & M. *as the case may be*] as psonal repves of (*d*) the will, dated, &c., & proved on, &c., of X., late of, &c., deced," the vendors, as trees of the sd settlemt [assent], with the consent (*e*) hby testified) of the life tenant, hby grt unto the pchaser, *Parcels*, p. 480 ; *habendum to pchaser in fee simple*, p. 500, f. **2.** [*Acknowmt by A. & B. as to munimts*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

XXXII.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *for* SALE (*e*) *under a* SETTLEMENT *or an* OLD WILL *to a* MARRIED WOMAN *the* PURCHASE-MONEY *being her* SEPARATE PROPERTY (*f*). VARIATION *in note for* SALE *under* DEVISE *in* TRUST *for* SALE ASSENTED *to* AFTER 1925.

Parties.

PARTIES, A. & B., *trees*, 1 ; [C., D., *exors* (*g*), 2] ; F., *pchaser*,

Recitals

" the wife of X., of, &c., " 3 ; *Recite settlemt or will of testor,*

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to exercise of trust for sale.

consents requisite to the execution of trusts for sale. By sub-s. (1) if the consent of more than two persons is required by the disposition, then, in favour of a purchaser, the consent of any two of such persons is made sufficient ; and if the consent of a person not *sui juris* is required by the disposition, that consent so far as concerns the purchaser is dispensed with (sub-s. 2). All the proper consents of persons *sui juris* and, in the case of a person not *sui juris*, the separate consent of the parent or testamentary or other guardian of an infant, or of the committee or receiver (if any) of a lunatic or defective, must nevertheless be obtained by the trustees executing the trust, for their own protection.

(*d*) If the sale is made by the trustees of a will under a devise to them upon trust for sale to which assent was duly given before 1926, omit the reference to the assent contained in the text, and substitute " the trusts of the will dated," &c., saying later " the vendors as trustees of the sd will," etc.

(*e*) See *ante*, p. 573, note (*b*).

As to conveyances

(*f*) As every married woman is by the M. W. P. Act, 1882, ss. 1, 2, 5 (whether the marriage was before or after the Act), enabled to acquire, hold,

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(*g*) For a form of recital of the executors' assent to the devise made previously to the sale, the executors not being made parties to the conveyance, see *ante*, p. 462, note (*a*).

setting out fully the trust for sale & receipt clause (if any), p. 456, f. **1** ; *Death of testor & probate*, p. 457 ; [AND WHAS the sd C. & D. have assented to the devise contained in the sd will of the ppty hby grted as they the sd C. & D. do hby acknowe (*h*)]. [*Occurrence of events upon which the trust for sale was to arise*], *Contract for sale by A. & B. to F.*, p. 473, f. **10** : NOW THIS DEED WITNESSETH that in psuance, &c., & in conson of the sum of £—— to the sd A. & B., pd by the sd F. out of moys belongg to her as her septe ppty (the receipt, &c.), they, the sd A. & B., as trees of the sd settlemt [will], hby grt unto the sd F., *Parcels*, p. 480 ; *habendum to F., in fee simple*, p. 500, f. **2**. [*Acknowmt by A. & B. as to munimts*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

Witnesseth.

Grant.

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and dispose of any property as a *feme sole* without the intervention of a trustee (see *ante*, p. 632, note (*c*)), property of any description may now be conveyed to a married woman in the same manner as to a man, even though the conveying party is her husband (see L. P. Act, 1925, s. 72 (2) ; and, as to leaseholds, *Ramsay* v. *Margrett*, [1894] 2 Q. B. 18. See also *Re Marlborough*, [1894] 2 Ch. 133 ; *French* v. *Gething*, [1921] 3 K. B. 280 ; [1922] 1 K. B. 236) ; but it is well to express that the purchase-money is paid out of moneys belonging to her as her separate property. The wife can also enter into any covenants which may be required (as in the case of leaseholds for the vendor's indemnity against the rents and covenants) : see *ante*, p. 606, note.

to married women.

(*h*) Where the vendors are trustees for sale under a devise to which the executors have assented after 1925, the recitals up to this point will be as follows : *Recite death & apptmt of exors & probate of will of testor*, p. 458, f. **6** ; *Assent in favour of trees for sale*, p. 458, f. **9** [*apptmt (if any) of new tree*]. The grant will be made by the trustees " as trees " simply.

XXXIII.

CONVEYANCE *by* TRUSTEES *for* SALE *of the* ENTIRETY *of* FREEHOLDS *formerly held by the* SAME PERSONS *in* POSSESSION *in* UNDIVIDED SHARES (*a*), *or* BENEFICIALLY *as* JOINT TENANTS (*b*).

PARTIES, A. & B., *trees for sale* (hrinar called the vendors), 1 ; C., *pchaser* (hrinar called the pchaser), 2. WHAS by the effect of the transitional provons for subjtg land held in undivided shares to trusts for sale contd in the Law of Ppty Act, 1925, the ppty hby assured, the entirety whrof was immedy before the commencemt of the sd Act vested in posson absolutely & benefly in the vendors in undivided shares free from incumbces

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(*a*) See L. P. Act, 1925, s. 39, and First Schedule, Part IV., and preliminary note, *ante*, p. 435 ; and as to the statutory trusts, see s. 35.

If there is a legal mortgage affecting the entirety of the property, the mortgage will remain paramount to the trust for sale (First Schedule, Part IV. (1), para. (8)). Any equitable mortgage on the entirety will, on the other hand, be divested, and effect must be given to it out of the proceeds of sale: *ibid.* para. (9) and s. 35. The consent of any equitable incumbrancer whose incumbrance is divested must be obtained to any sale made pursuant to the trust for sale ; but the purchaser is not concerned to inquire whether any such consent has been given.

A conveyance made by trustees for sale under the statutory trusts has the same overreaching effect, and the immunity of the purchaser from seeing to the application of the purchase-money (s. 27) is the same in all respects as if the conveyance were made under a disposition in trust for sale.

(*b*) Where the vendors were previously to the commencement of the Act beneficially entitled as joint tenants the following recital will be substituted for that in the text :

" WHAS under & by virtue of a convce dated, &c., & made, &c., & by the effect of s. 36 of the Law of Ppty Act, 1925, the ppty hby assured wch at the commencemt of the sd Act stood limited to the vendors in fee simple for their own use & benefit absolutely became vested in them upon the staty trusts for sale & orwise in the sd Act mentd or referred to."

Death of one of two joint tenants.

An express or implied trust for sale, so far as regards the safety and protection of any purchaser thereunder, is deemed to be subsisting until the land subject to the trust has been conveyed to or under the direction of the persons interested in the proceeds of sale. Where, therefore, one of two joint tenants dies, the survivor must either appoint another person to act with him in the trust, and sell under the trust for sale ; or execute a conveyance of the property to himself discharged from the trust for sale, and sell as absolute owner.

affectg the same or the undivided shares throf became & is now vested in the vendors as joint tenants upon the staty trusts for sale & orwise in the sd Act mentd or referred to ; *Contract for sale*, p. 474 : NOW THIS DEED WITNESSETH that in psuance of the sd agmt & in conson, &c. (the receipt, &c.), the vendors as such trees as afsd hby grant unto the pchaser ; *Parcels*, p. 480 ; *habendum to pchaser in fee simple*, p. 500, f. **2.** [*Achnowmt by vendors as to munimts*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

XXXIV.

CONVEYANCE *of* FREEHOLDS *formerly held by* SEVERAL *in* UNDIVIDED SHARES *by* TRUSTEES *for* SALE *appointed in the place of the* PUBLIC TRUSTEE (*a*).

PARTIES, A. & B., *trees for sale* (hrinar called the vendors), 1 ; C., *pchaser* (hrinar called the pchaser), 2. WHAS by the effect of the transitional provons for subjtg land held in undivided shares to trusts for sale contd in the Law of Ppty Act, 1925, the ppty hby assured, the entirety whrof was immedy before the commencemt of the sd Act vested in posson in the apptors hrinar mentd & others in undivided shares free from incumbs affectg the same, *or as the case may be*, became vested in the Public Tree upon the staty trusts for sale & orwise in the sd Act mentd or referred to : AND WHAS the Public Tree has never at any time acted in the sd trusts : AND WHAS by deed of apptmt of new trees dated, &c., & made, &c., the sd X. & Y. being the psons hrinbfe referred to as the apptors & being intted in more than an undivided half part of the ppty hby assured duly apptd the vendors to be trees in the place of the Public Tree & by declon vested the sd ppty in the sd X. & Y. upon the staty trusts ; *Contract for sale*, p. 474 : NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson, &c. (the rect, &c.), the vendors as such

(*a*) See L. P. Act, 1925, s. 39, First Schedule, Part IV. para. 1 (4) ; and preliminary note, *ante*, p. 436. The recitals must show that the appointment of new trustees in the place of the Public Trustee was, on the face of it, a valid and effectual appointment.

trees as afsd hby grant unto the pchaser: *Parcels*, p. 480; *habendum to pchaser in fee simple*, p. 500, f. **2**. [*Acknowmt by vendors as to munimts*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

XXXV.

CONVEYANCE *of a* BANKRUPT'S FREEHOLDS *and* LEASEHOLDS, *by the* TRUSTEE *in* BANKRUPTCY (*b*), *with the* CONCURRENCE *of the* REPRESENTATIVES *of a* MORTGAGEE *of the* FREEHOLDS.

Parties.

PARTIES, A., the tree of the ppty of D., a bkpt (hrinar called the tree), 1; B. & C., *exors of mtgee*, 2 (*d*); E., *pchaser*, 3.

As to sale under Bankruptcy Acts.

(*b*) See the Bankruptcy Acts, 1883 to 1914. As to the trustee and his powers, see the Act of 1914, ss. 19, 37, 38, 39, 53, 55, 72 (3), 74 (1), and Part IV. As to evidence of his appointment, see s. 143 of the Act of 1914. The official receiver when acting as trustee, in the interval between the adjudication and the appointment of a trustee by the creditors, has power to sell the bankrupt's property: *Turquand* v. *Board of Trade*, 11 App. Cas. 286.

As to partnership property, see s. 116 of the Act of 1914; and as to limited partnerships, s. 127 of the Act of 1914.

As to stamp duty, see s. 148. As to the powers of a trustee under a composition or scheme of arrangement, see Bankruptcy Act, 1914, s. 16 (17).

Concurrence of bankrupt.

There can seldom be any occasion for obtaining the bankrupt's concurrence, as the annulment of the bankruptcy would not prejudice *bonâ fide* sales or dispositions of the property (see Bankruptcy Act, 1914, s. 29); and the bankrupt's covenants would rarely be of any value. Upon annulment of bankruptcy, the property of the bankrupt reverts to him, unless vested in some other person by order of the Court: *Flower* v. *Lyme Regis Corpn.*, [1921] 1 K. B. 488; and see s. 21 (2) of the Act of 1914.

After-acquired property.

By s. 47 (1) of the Act of 1914, re-enacting s. 11 (1) of the Act of 1913, which adopted definitely in regard to both real and personal after-acquired property of a bankrupt, the rule laid down in *Cohen* v. *Mitchell*, 25 Q. B. D. at p. 267, it is enacted that all transactions by a bankrupt with any person dealing with him *bonâ fide* and for value (see *Re Bennett*, [1907] 1 K. B. 149; *Hosack* v. *Robins*, [1918] 2 Ch. 339) in respect of property, whether real or personal, acquired by the bankrupt after the adjudication shall, if completed before any intervention by the trustee, be valid against the trustee, and that any estate or interest in such property which by virtue of the enactments relating to bankruptcy is vested in the trustee shall determine

(*d*) See Bankruptcy Act, 1914, s. 76.

WHAS the sd A. was at the date of his bkrptcy hrinar recited the este owner in respt of the fee simple of the ppty described in the first schdle hrto & was also the este owner of the ppty described in the second schedule hrto in respt of the term of yrs grted by the lease under wch the same is held as shown in the second pt of the same schdle: AND WHAS under or by virtue of a mtge dated, &c., & made, &c., & by the effect of the transitional provons of the Law of Ppty Act, 1925, a term of 3000 yrs created by the sd Act in the sd freehold ppty became vested in the sd X. by way of mtge for securg the paymt to him of the sum of £—— with intt thron as thrin expressed: AND WHAS the sd X. died on the —— day of —— havg by his will dated, &c., *continue apptmt of exors & probate of will*, p. 458, f. **6**; *Bkptcy of D., & apptmt of A. tree*, p. 468; *Contract by tree for sale to E.*, p. 471; *State of mtge debt*, p. 476, f. **23**; *Agrmt of B. & C. to concur*, p. 476, f. **24**.

NOW THIS DEED WITNESSETH as follows:— Witnesseth.

1. IN PSUANCE of the recited agrmts & in conson, &c. (the receipt, &c.), *the whole pchase-moy paid as to part to B. & C. as to balance to the trustee, see* p. 479, the tree, **as tree** hby grants & the sd B. & C., **as mtgees**, at the request *or, if paid off in full*, " by the direction " of the tree & to the intent that the sd mtge term shl become merged in the freehold reversion of the ppty hby assured hby grt & release unto the sd E., *Freehold parcels by refce to schedule*, pp. 483 *et seq.* *Habendum to E. in fee simple free from the mtge*, p. 502.

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and pass in such manner and to such extent as may be required for giving effect to any such transaction. The sub-section is to apply to transactions with respect to real property completed before the 1st of April, 1914 in any case where there has not been any intervention by the trustee before that date. An intervention once made cannot subsequently be withdrawn: *Hill* v. *Settle*, [1917] 1 Ch. 319.

An undischarged bankrupt could not prior to the Act of 1913 have made a good title to after-acquired real property: *Official Receiver* v. *Cooke*, [1906] 2 Ch. 661.

Neither the trustee in bankruptcy nor any member of the committee of inspection of an estate may either directly or indirectly while acting as such trustee or member of the committee, purchase any part of the estate for himself: see Bankruptcy Rules, 1886, r. 316; *Re Gallard*, [1897] 2 Q. B. 8. Purchase by trustee or member of committee.

The devolution of land on the bankruptcy, or on the liquidation of his affairs by arrangement of the registered proprietor, is governed by the L. R. Act, 1925, s. 42. The trustee in bankruptcy can transfer before he is registered: L. R. Act, 1925, s. 37 (1). Registered land.

Assignment of leaseholds.

2. In further psuance, &c., & for the conson afsd, the tree, as tree, hby assns unto the sd E., *Leasehd parcels by refce to lease in schedule*, p. 485. *Habendum to E., subjt to rent, &c.*, p. 501.

[3. *Clause extendg staty implied covt*, p. 517, f. **1**, *saying*, "the sd leasehd premes."**]**

[4. *Statemt as to value*, p. 525.**]**

In witness, &c.

Schedules.

NOTE ON SETTLED LAND ACT.

Provisions of S. L. Act, 1925, as to sales.

As many of the following precedents are based on or affected by the S. L. Act, 1925, it will be convenient to insert here a short note of the provisions of that Act so far as they concern the sale & purchase of the fee simple or other legal estate or interest in settled land.

Settled land.

Settled land is defined (s. 2) as land which is or is deemed to be the subject of a settlement; and may include (s. 117 (ix)) land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments (see *ibid.* (vii)); also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, and any estate or interest in land not being an undivided share in land.

The meaning of "settlement," "the settlement," and "a settlement" in the Act.

Land is the subject of a settlement, and a settlement in the abstract subsists where land stands for the time being limited in trust or limited or charged as mentioned in any of paragraphs (i) to (v) of s. 1 (1) of the Act. In any such case the instrument or number of instruments under or by virtue of which the land stands for the time being so limited or charged "creates or is" for the purposes of the Act a settlement. This is the method of interpretation followed in the earlier Act of 1882; and it is worth while, here, to emphasise that it is the instrument or number of instruments which creates the settlement or, if the land has become the subject of a compound settlement, then the number of instruments constituting the compound settlement, which in the Act is afterwards referred to as "a settlement" or "the settlement" as the case may require. The expression "settlement" in the abstract sense above mentioned is nevertheless appropriately used in the Act in various contexts.

Limitations which constitute a settlement.

A settlement subsists wherever land stands for the time being limited in trust for any persons by way of succession, *i.e.*, "successively on death" (*Att.-Gen.* v. *Owen*, [1899] 2 Q. B. 253; *Re Campbell*, [1902] 1 K. B. at p. 123); or for any person in possession for any of the following interests, namely, an entailed interest, a fee simple interest or an interest for a term of years absolute subject in either case to an executory limitation over, a base fee interest in freeholds or leaseholds, or, if the person beneficially interested is an infant, a fee simple interest or an interest for a term of years absolute; or for any person contingently entitled in fee simple or for a term of years absolute; or limited to or in trust for a married woman of full age in possession in fee simple or for a term of years absolute subject to a restraint on anticipation; or stands for the time being charged "whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons, with or without any term of years for securing or raising the same."

Neither an infant nor a person contingently entitled is a tenant for life within the meaning of the Act.

Title to settled land.

Before 1926 title to settled land as defined by the earlier Acts might have been made in various ways otherwise than by the tenant for life under his statutory powers. The land might for instance have been validly and effectually disposed of by the donee or donees of an overriding power of appointment contained in the settlement; by the tenant for life with the concurrence of the remainderman, or, by an absolute owner subject to but indemnified against a rentcharge or annuities subsisting under a settlement otherwise spent; or, in the case of a spent settlement, by the person or persons who had become absolute owners in fee simple. The transitional and other provisions of the L. P. Act, 1925, combine with the requirements of the S. L. Act to render impossible any method of making title to settled land other than under the S. L. Act. By the effect of the L. P. Act, First Sched. Part II. paras. 3, 5, and 6, the legal estate in settled land became vested, at the commencement of the Act, in the tenant for life or statutory owner entitled under the S. L. Act, 1925, to require a vesting deed to be executed in his favour, or in the personal representative, if any, in whom the land may be vested or the Public Trustee, as the case may require, but subject to any mortgage term subsisting or created by that Act.

Under the S. L. Act any legal estate thus acquired as also the legal estate in any land brought into settlement after 1925 must be subjected to a vesting instrument; and until that instrument is executed any purported disposition on sale of the settled land, though made by the person who is the estate owner thereof, will be ineffectual to pass the legal estate in the land (except in favour of a purchaser without notice of the settlement) (s. 13); and any conveyance on sale of land which is the subject of a vesting instrument but which has ceased to be settled land, except a conveyance made by personal representatives, will be ineffectual to pass the legal estate, unless the trustees have been duly discharged from the trusts of the settlement in the prescribed manner: ss. 17, 18.

Every settlement of land must now consist of two documents one of which, namely a vesting instrument, containing the prescribed statements and particulars, is made a necessary document of title to the settled land, and the other of which, namely a trust instrument, relating to the rights of the beneficiaries between themselves, is so far as possible or expedient kept off the title to the land.

Settlements of land may be divided, for purposes of title, into two classes, one class consisting of settlements made after the Act and effected by vesting deed and trust instrument in the prescribed manner; and the other class consisting of settlements subsisting at the commencement of the Act and certain other settlements or instruments (including settlements irregularly effected) which are deemed to be trust instruments for the purposes of the Act (s. 9). In the case of the first-mentioned class of settlements, the vesting deed constitutes a good and sufficient root of title to the property appearing to be comprised therein, and the equitable interests of beneficiaries are thus effectually kept off the title from the inception of the settlement: s. 110 (2).

On the other hand, the first vesting instrument executed for the purpose of giving effect to a settlement of the second class does not in itself afford a sufficient root of title and does not obviate the necessity of investigating the earlier title on purchase of the settled land: s. 110 (2).

The vesting provisions are contained in ss. 4, 5, 7, 9, 10, 37, and Second Schedule of the Act.

Sections 4 and 5 provide that every settlement of a legal estate in land, *inter*

vivos, shall, save as in the Act otherwise provided (see s. 12), be effected by two deeds, namely a vesting deed and a trust instrument, and unless so effected shall not operate to transfer or create a legal estate. By the vesting deed the land is to be conveyed to or vested or declared to be vested in the tenant for life or statutory owner; and the deed is to contain (*a*) a description of the settled land; (*b*) a statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the same; (*c*) the names of the persons who are trustees of the settlement; (*d*) any additional or larger powers conferred by the trust instrument relating to the settled land; and (*e*) the name of the person (if any) for the time being entitled under the trust instrument to appoint new trustees of the settlement. See the forms of Vesting Deeds and Trust Instruments and the notes thereon in Vol. II., sub-tit. Settlements (Real).

Section 37 by reference to the transitional provisions contained in the Second Schedule provides for the execution of a vesting deed or vesting assent in the case of every settlement subsisting at the commencement of the Act, unless the settled land is held at law or in equity in undivided shares vested in possession, in which excepted case the land becomes subject to a trust for sale. If by virtue of the transitional provisions of the L. P. Act, 1925, the settled land has become vested in the tenant for life, the necessary vesting deed must be executed by the trustees of the settlement for the purposes of the S. L. Act; but if the land has become vested in personal representatives, such representatives (without prejudice to their paramount powers for the purposes of administration) must execute the necessary instrument which may take the form of a vesting deed or vesting assent.

If a settlement subsists by reason of the infancy of the person beneficially entitled, or if under a subsisting settlement an infant would, if of full age, be a tenant for life or have the powers of a tenant for life, the settled land is made to vest in the trustees (if any) of the settlement as statutory owners (see s. 117 (xxvi) upon such trusts as may be requisite for giving effect to the rights of the infant and other persons (if any) interested. In this case also notwithstanding that the settled land is vested by virtue of the Act in the trustees of the settlement the trustees are required to execute a principal vesting deed. If there are no trustees of the settlement the settled land is made to vest pending their appointment in the public trustee upon the like trusts.

Again, on any change of ownership of the settled land, by reason of the death of the tenant for life or statutory owner in whom the land was vested; or, if, by reason of forfeiture, surrender or otherwise, the estate owner ceases to have the statutory powers of a tenant for life; the land must be conveyed (s. 7 (1) and (4)) to the person who under the trust instrument or by virtue of the Act becomes the tenant for life or statutory owner and if more than one as joint tenants. Section 9 of the Act provides for the execution of a principal vesting deed by the trustees of the settlement upon any settlement or instrument (including any settlement irregularly effected) deemed by that section to be a trust instrument, taking effect; and provision is made by s. 10 of the Act for land purchased out of capital money arising under a settlement or acquired in exchange for settled land to be conveyed in the form of a vesting deed (in the Act referred to as a subsidiary vesting deed) to the tenant for life or statutory owner.

In the case of any person by whom a vesting deed ought to be executed refusing to execute the same, or being out of the United Kingdom, or where

such person cannot be found or where the Court is satisfied that a vesting instrument cannot be executed, or cannot be executed without undue delay or expense, the court may make a vesting order to which the provisions of the Act relating to vesting instruments will apply and which must contain the like statements and particulars as are required to be contained in a vesting instrument.

In connection with the title to land derived under a settlement subsisting at the commencement of the Act or any other settlements of the same class (see *supra*, p. 582), it will be incumbent on the purchaser to ascertain that the statements and particulars contained in the vesting deed correctly represent the effect of any dealings with the equitable interests under the settlement which may have taken place: s. 110 (2).

Where before 1926 a tenant for life in possession and tenant in tail in remainder joined in executing a disentailing assurance and resettled the property to uses under which a new life estate was limited to the tenant for life (whether or not in restoration of his old life estate), the statutory powers which the tenant for life had under the original settlement were held, after some conflict of judicial opinion, to remain exerciseable by him as tenant for life under that settlement (see *Re Mundy and Roper*, [1899] 1 Ch. 275; *Re Cope and Welland's Contract*, [1919] 2 Ch. 376); and the statutory powers which he would have had under the resettlement, if that had been the only settlement, were also after a similar conflict of opinion held exerciseable by him: *Re Constable's S.E.*, [1919] 1 Ch. 178; but see this case discussed in *Parr* v. *Att.-Gen.*, *Times*, 19th December, 1925. The like result, based on the theory that the original life interest is in neither case destroyed, is arrived at by the S. L. Act, 1925, s. 22; and the S. L. Acts, 1882 to 1890, are retrospectively amended in this respect: S. L. Act, 1925, Fourth Schedule, para. 8.

Where, after such resettlement the tenant for life died, the tenant in tail did not before 1926 succeed to the powers which the tenant for life had under the original settlement. He will now do so: see s. 1 (1) (ii) (*a*) and the concluding proviso to that sub-section; and the trustees for the purposes of the Act of the original settlement will be trustees for the purposes of the Act of the compound settlement: ss. 31, 33.

A surrender by a tenant for life of his life estate or interest under the settlement with intent to extinguish the same, made before or after the commencement of the Act, to the person next entitled in remainder or reversion under the settlement, is made to operate as an extinguishment of such life estate or interest provided that the person to whom the surrender was or is made would be or have the powers of a tenant for life under the Act if the tenant for life surrendering his estate or interest were dead: s. 105. This provision is without prejudice to anything done by the tenant for life before 1926 in exercise of any power operating under the S. L. Acts, 1882 to 1890.

Every settlement subsists, and the land subject to the settlement remains, accordingly, settled land so long as any limitation, charge, or power of charging under the settlement subsists, or is capable of being exercised, or any person absolutely entitled is an infant: s. 3. It follows that a disentail by a tenant in tail in possession does not, as formerly, preclude him from exercising the powers of a tenant for life so as to override subsisting charges having priority under the settlement to the estate tail.

Act cannot be excluded.

The Act cannot be excluded or controlled by the settlement: s. 106, cf. *Re Smith*, [1899] 1 Ch. 331; *Re Trenchard*, [1902] 1 Ch. 378; *Re Freme*,

56 Sol. J. 362 ; and see *Re Simpson*, [1913] 1 Ch. 277 ; and will override apparently, a previous private Act : *Re Chaytor*, 25 Ch. D. 651 ; and the statutory powers of the tenant for life, as they override the settlement, are not affected by an action for the administration of the trusts by the Court : *Cardigan* v. *Curzon-Howe*, 30 Ch. D. 531.

Powers given to owner in possession.

The powers of the Act are vested in the tenant for life, as defined by s. 19 ; namely, the person of full age beneficially entitled to the " possession " of the settled land, for his life ; and any other limited owner of full age as defined by s. 20, where his estate or interest is " in possession " (see *post*, p. 586) ; and in case there should be no tenant for life nor any person having the powers of a tenant for life within s. 20, then in the statutory owner or statutory owners as defined by the Act, i.e. the trustees of the settlement or other persons who during a minority, or at any other time, when there is no tenant for life, have the powers of a tenant for life under the Act : ss. 23, 117 (xxvi). " Possession " includes receipt of rents and profits, or the right to receive the same, if any ; and in ss. 19 and 20 of the Act must be read as contra-distinguished from " remainder " or " reversion " : *Re Atkinson*, 31 Ch. D. 577. Thus a tenant for life whose estate is only to be created under an executory trust at the end of a term for accumulation, has not an estate in possession within the Act : *Re Strangways*, 34 Ch. D. 423 ; but if he would be entitled during the term to the surplus rents (if any) he is in possession within the meaning of the Act though there are none : *Re Jones*, 26 Ch. D. 736 ; *Re Clitheroe*, 31 Ch. D. 135 ; see also *Vine* v. *Raleigh*, [1896] 1 Ch. 37 ; *Re Edwards*, [1897] 2 Ch. 412. A right to reside : *Re Llanover*, [1903] 2 Ch. 16 ; or to occupy so long as he thinks fit : *Re Carne's S. E.*, [1899] 1 Ch. 324 ; *Re Boyer's S. E.*, [1916] 2 Ch. 404 ; *Re Gibbons*, [1920] 1 Ch. 372 ; as opposed to the right or privilege of personal residence use or occupation ; *Re Anderson*, [1920] 1 Ch. 175 ; *Re Gibbons*, *sup.* at p. 379 ; is a right to possession within the sub-section. Where the interest of a tenant for life is determined by the provisions of the settlement, as by forfeiture on non-compliance with a name and arms clause, or by surrender or otherwise, he ceases to have the statutory powers, and must convey the settled land to the person who then becomes the tenant for life or statutory owner : s 7 (4).

Reversion.

The definition of tenant for life clearly excludes the application of the Act to a settlement of a reversion, until it falls into possession.

Powers not affected by incumbrances.

The powers of the tenant for life are not affected by the existence of incumbrances on the settled land, or on his life interest, whether created by the settlement or otherwise (ss. 19 (4) and 104), *e.g.*, a mortgage, or a charge for maintenance of children, *Re Pollock*, [1906] 1 Ch. 146, or a charge of jointure or portions secured by a term or otherwise, although the whole of the rents may be absorbed by expenses and interest, *Re Jones*, 26 Ch. D. 736 ; or on any estate in remainder ; and therefore upon a sale by a tenant for life under the statutory power, with the consent, which may or may not be required (see s. 104 (3), and (4) and *post*, p. 586, of his own incumbrancers, but with which consent the purchaser is in no case concerned (*ib.* sub-s. (5)), the tenant for life need not obtain the concurrence in the conveyance either of his own incumbrancers or those of the remainderman : *Re Dickin & Kelsall*, [1908] 1 Ch. 213 ; *Re Davies & Kent*, [1910] 2 Ch. 35. So also a trust for accumulation of the rents for discharging incumbrances, which may at any time cease or be put an end to by the tenant for life by paying off the charges, does not affect his powers : see s. 20 (vi) and (viii), and cf. *Re Clitheroe*, 31 Ch. D. 135 ; *Williams* v. *Jenkins*, [1893] 1 Ch. 700 ;

Re Drinkwater's S. E., 49 Sol. J. 237; and it follows that his powers would not be affected by a mortgagee taking possession.

Tenant for life cannot assign powers.

The tenant for life cannot assign or release or contract not to exercise his powers (s. 104 (2)); but where he has incumbered his life estate by an assignment for value, he must, in exercising his statutory powers, have some regard to the assignee's rights. Thus, if the assignment has been made before 1926, the assignee's rights are not to be affected without his consent, which is accordingly made requisite to any exercise by the tenant for life of his statutory powers except the power of granting leases at a rack rent where the assignee is not actually in possession, and the power of investing capital money in securities authorised by statute for the investment of trust money. If the assignment has been made since 1925, the consent of the assignee will only be requisite, if the assignment so provides or if it takes effect by operation of the law of bankruptcy, to the investment of capital money otherwise than in securities authorised by statute for the investment of trust money (s. 104 (5)). It is, however, expressly provided that a purchaser is in no case concerned to see or inquire whether any consent made necessary by the section has been obtained, and that any such consent may be given by a trustee or personal representative who is an assignee for value. Upon any sale of the settled land, the assignees' rights will be shifted to the property for the time being representing the property charged.

By sub-s. (11) of the same section it is provided that any instrument whereby a tenant for life in consideration of marriage or by way of family arrangement, makes an assignment of or charge upon his estate or interest under the settlement (not being a security for money advanced), is to be deemed one of the instruments creating the settlement, and not an assignment for value within the meaning of the section. This provision would apply to the common case where the tenant for life charges his life interest on a resettlement or otherwise, with a provision for his eldest son; see also the retrospective amendments of s. 50 of the S. L. Act, 1882, in the Fourth Schedule to the Act of 1925, which include a provision (para. 13 (3)) that a trustee or personal representative who is an assignee for value, shall be deemed always to have had power to consent to the exercise by the tenant for life of his powers under the S. L. Acts, 1882 to 1890. See *Re Mountgarret and Moore's Contract*, [1915] 1 Ch. 443.

To what limited owners the Act applies.

The Act of 1925 (ss. 19 and 20) applies to the following limited owners when of full age and entitled beneficially (*Re Jemmett & Guest*, [1907] 1 Ch. 629) in "possession," viz., 1. A tenant for his own life. 2. A tenant in tail. 3. A tenant in fee simple subject to an executory gift or limitation over in any event; *Re Richardson*, [1904] 2 Ch. 777; *Re Walmsley's S. E.*, 55 Sol. J. 600. 4. A person entitled to a base fee, including a tenant for life thereof (*Re Morshead*, [1893] W. N. 180), although the reversion is in the Crown. 5. A tenant for years determinable on life other than a lessee at a rent. 6. A tenant *pur autre vie*, with the like exception. 7. A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease during the life or to be defeated by an executory gift over: *Re Morgan*, 24 Ch. D. 114; *Re Boyer's S. E.*, [1916] 2 Ch. 404; *Re Gibbons*, [1920] 1 Ch. 372; and see the peculiar case of *Re Hazle's S. E.*, 29 Ch. D. 78, or is subject to a trust for accumulation: see *Re Clitheroe*, 31 Ch. D. 135; *Re Strangways*, 34 Ch. D. 423; *Re Martyn*, 44 Sol. J. 657; *Re Llewellyn*, [1911] 1 Ch. 451; *Re Beauchamp*, [1914] 1 Ch. 676; *Re Musgrave*, [1916] 2 Ch. 417. 8. A tenant by the curtesy; see s. 20 (3).

9. A person entitled to the income of land under a trust for payment thereof to him during his own or any other life, whether or not subject to expenses of management or to a trust for accumulation of income for any purpose, or until sale of the land or until forfeiture, cesser, or determination by any means of his interest therein unless the land is subject to an immediate binding trust for sale: cf. *Re Sumner's S. E.*, [1911] 1 Ch. 315; *Re Johnson*, [1914] 2 Ch. 134; cf. *Re Llanover*, [1907] 1 Ch. 635; discussed 52 Sol. J. 495, 511. 10. A person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement; and 11. A married woman entitled in fee simple or for a term of years but restrained from anticipation. See ss. 1 (1) (iv) and 25.

As to persons jointly entitled.

Where there are two or more persons of full age beneficially entitled in possession of settled land for life as joint tenants, they together constitute the tenant for life for the purposes of the Act, s. 19 (2); but if there are several persons so entitled all of whom are not of full age, then such one or more of them as is or are for the time being of full age, is or (if more than one) together constitute the tenant for life for the purposes of the Act (s. 19 (3)), and see s. 26 (5). The case of several persons concurrently entitled as tenant for life otherwise than as joint tenants cannot now arise. The common trust creating a life estate protected against bankruptcy, &c., by means of a discretionary trust for the application of the income for the benefit of all or any exclusively of specified objects for the time being in esse, does not constitute the objects *pro tem.* of the trust a compound tenant for life within the Act: *Re Atkinson*, 31 Ch. D. 577.

Powers of sale and exchange.

A tenant for life (which in the Act of 1925 (see s. 20 (2)) and in the following remarks includes other limited owners having the powers of a tenant for life) is by the Act invested with very large powers of selling and of exchanging for other land or for the like rights over or in relation to other land "the land or any part thereof or any easement right or privilege of any kind over or in relation to the same" (ss. 38 (i) (iii), 49, and 50). This includes power to create and sell to an adjoining landowner an easement or right over the settled land; or by way of sale to release, so as to effect an extinguishment of an easement over adjoining land; or, by way of exchange, to release so as to extinguish an easement over adjoining land in exchange for the release and extinguishment of an easement over the settled land; overruling the decision in *Re Brotherton*, 77 L. J. Ch. 58, on the less extensive power enjoyed under the Act of 1882.

Sale for rentcharge.

As to sales or grants in fee for a rentcharge, see ss. 10 (1) and 39. The former section provides that a rentcharge reserved on the sale of settled land must be conveyed to the tenant for life or statutory owner by way of subsidiary vesting deed. If the land is sold in consideration of a terminable rent consisting of principal & interest combined, the conveyance must distinguish the part attributable to principal from the part attributable to interest. See s. 39 (2) and *post*, p. 599, note (*a*).

Reservations and restrictions.

The sale must be made for the best consideration in money that can reasonably be obtained: S. L. Act, 1925, s. 39 (1), unless it is made for the purpose of the erection on the land of small dwellings or is made to a county or county borough council for the purpose of small holdings, in either of which cases the special provisions of s. 57 apply. The Act gives the usual subsidiary powers (s. 39 (6)), including power to stipulate that timber and fixtures shall be taken by the purchaser at a valuation (s. 40 (2)); and authorises the grant or reservation of any easement, right or privilege

of any kind over or in relation to the settled land (s. 49 (1) (*a*)) and the imposition of any restrictions with respect to building on or other user of the land, or mines or minerals, or for the purpose of the more beneficial working thereof or with respect to any other thing to be imposed, reserved, or made binding as far as the law permits by covenant, condition, or otherwise, on the tenant for life or statutory owner, and the settled land or any part thereof, or on the other party and any land sold to him (s. 49 (1) (*b*). The Act further gives power to sell the surface of the settled land without the mines and minerals (as defined by s. 117 (1) (xv)); and *vice versâ*, with or without a reservation or grant of powers of working, easements, &c. (s. 50); and for the development, improvement, or general benefit of the settled land, authorises the grant of water rights (s. 54), and the grant of land for public and charitable purposes (s. 55), and on or in connection with a sale for building purposes, authorises the appropriation of land for the purpose of laying out roads with sewers, &c. (s. 56)

Timber. On a sale of an estate with the timber on it, the tenant for life, though empowered to cut and sell timber for his own use, is not entitled to the price of the timber: *Re Llewellin*, 37 Ch. D. 317, and see s. 49 (3).

Mansion house, &c. The restriction imposed by s. 10 of the S. L. Act, 1890, upon the sale by the tenant for life of the principal mansion house, if any, on the settled land, and the pleasure grounds and park and lands, if any, usually occupied therewith without the consent of the trustees of the settlement or an order of the court, which extended to any easement over the same: *Sutherland* v. *Sutherland*, [1893] 3 Ch. 169; *Pease* v. *Courtney*, [1904] 2 Ch. 503, and to a park though not usually occupied with the principal mansion house: *Pease* v. *Courtney*, *sup.*; has been removed by the Act of 1925, s. 65, except where (*a*) the settlement was made or came into operation before 1926 and does not expressly provide that such consent or order shall be unnecessary, or (*b*) the settlement was made or came into operation after 1925 and expressly provides that such consent or order shall be necessary.

Where a house is usually occupied as a farmhouse, or the house and grounds, &c., usually occupied therewith do not exceed 25 acres, the house is not to be deemed a principal mansion house. As the Act overrides the settlement, the Court may order a sale of the mansion house, though expressly negatived by the settlement: *Re Brown*, 27 Ch. D. 179. As to the considerations which should guide the Court in consenting to a sale of the mansion house, &c., or the reverse, see *Bruce* v. *Marquis of Ailesbury*, [1892] A. C. 356; *Re Wortham*, 75 L. T. 293. A house may cease to be a principal mansion house: *Re Wythes' S. E.*, [1908] 1 Ch. 593. The word "principal" does not of course imply that there should necessarily be a second mansion or house. As to the position when there are two mansion houses, one on each of two estates, comprised in the same settlement, see *Gilbey* v. *Rush*, [1906] 1 Ch. 11. The restriction would in many cases prevent the sale under the Act, unless the requisite consent were obtained, of outlying parts of the estate consisting of small portions of wood or coppice usually kept in hand and "occupied with" the mansion. It would also apply to land which has been usually occupied with the mansion, though at the time of sale let to a tenant. See the form of order authorising the sale of the mansion house, &c., Seton, 7th ed., 1764.

Power of tenant for life to convey. By S. L. Act, 1925, s. 72 (1), power is given to the tenant for life on any sale or other disposition of the settled land, to effect the transaction by deed to the extent of the estate or interest vested or declared to be vested in him by the last or only vesting instrument affecting the land sold or any

less estate or interest, in the manner requisite for giving effect to such sale or other disposition.

To what estates conveyance is subject.

By s. 72 (2) the conveyance of the tenant for life is effectual to pass the land conveyed, or the easements, rights, privileges, or other interests created, discharged from the limitations, powers, and provisions of the settlement, and from all estates, interests and charges subsisting or to arise thereunder, but subject to all legal estates and charges by way of legal mortgage having priority to the settlement, or which have been conveyed or created for securing money actually raised at the date of the deed, and to all leases and grants at fee farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges which (*a*) were before the date of the deed granted or made for value in money or money's worth, or agreed so to be, by the tenant for life or statutory owner, or by any of his predecessors in title, or any trustees for them, under the settlement, or under any statutory power, or are at that date otherwise binding on the successor in title of the tenant for life or statutory owner; and (*b*) are at the date of the deed protected by registration under the L. C. Act, 1925, if capable of registration thereunder.

Any annuity, limited owner's charge or general equitable charge which may be subjected to a settlement under the provisions of s. 21 of the Act will be overreached by a disposition under the Act made pursuant to s. 72, notwithstanding registration under the L. C. Act, 1925. See S. L. Act, 1925, s. 72 (3).

As to trustees being parties.

Except where the purchase-money is paid into court, the trustees are usually made parties to any conveyance on sale of settled land for the purpose of acknowledging the receipt of the purchase-money (s. 75); but they are not necessary parties for this purpose, as an endorsed receipt by them in the usual form is sufficient, and equally effective with a receipt in the body of the deed as an authority to the solicitor producing the deed to receive and give a discharge for the money under the L. P. Act, 1925, s. 69, and the T. Act, 1925, s. 23 (3).

Shifting of incumbrances.

The tenant for life is also empowered to transfer an incumbrance, which includes a rentcharge created under the Improvement of Land Acts, 1864 and 1899: *Re Strafford & Maples*, [1896] 1 Ch. 235, affecting the land sold to any other part of the settled estates with the consent of the incumbrancer: S. L. Act, 1925, ss. 69, 82; and Vol. 2, p. 270; also he may raise money to pay off incumbrances by mortgage of the settled land: see S. L. Act, 1925, s. 71, and Vol. 2, p. 107, note (*a*).

Payment of purchase-money.

The purchase-money is by s. 75 (1) to be paid at the option of the tenant for life, which, if exercised in good faith, cannot be controlled by the Court, *Re Lord Coleridge*, [1895] 2 Ch. 704, either to the trustees of the settlement, whose receipt (s. 95), whether they were appointed by the settlement or by an order of Court under s. 34, see *Cookes* v. *Cookes*, 34 Ch. D. 498; is a good discharge (subject to s. 94, enacting that capital money under the Act is not to be paid to fewer than two trustees, unless the trustee is a trust corporation), or into Court. The option given to the tenant for life to direct payment into Court cannot be exercised (*Hatten* v. *Russell*, 38 Ch. D. at p. 345), and therefore the sale cannot be made (*Re Fisher & Grazebrook*, [1898] 2 Ch. 660), unless at the time of completion there are trustees. Where the whole of the purchase-money is to be paid direct to a prior incumbrancer it must be so paid by the direction of the trustees (s. 95), who must concur in the conveyance for that purpose: *Re Norton & Las Casas*, [1909] 2 Ch. 59, discussed 53 Sol. J. 611. It was

formerly held that if the money was paid into Court it would not afterwards be paid out to the trustees : *Cookes* v. *Cookes*, 34 Ch. D. 498, but this was altered by the Act of 1890, s. 14, now replaced by the S. L. Act, 1925, s. 75 (8). As to the investment of capital moneys, see Vol. 2, *sub tit.* "SETTLEMENTS (REAL)."

Contracts.

Full powers are given by s. 90 of the Act of 1925 to a tenant for life, to enter into and vary contracts for sale, &c., which are to be binding on, and may be carried into effect by his successors in title ; and by s. 63 a tenant for life is empowered to make any disposition which may be necessary to give effect to a contract entered into by a predecessor in title and which, if made by the latter, would have been valid as against his successors in title.

General powers exercise-able under order of Court.

Section 64 confers upon the tenant for life power to carry out, under an order of the Court to be obtained for that purpose, any transaction affecting or concerning the settled land, or any part thereof, or any other land (not being a transaction otherwise authorised by the Act or by the settlement) which in the opinion of the Court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement.

Who are trustees for purposes of the Acts.

Although any power of sale relating to settled land which by the settlement is conferred upon the trustees of the settlement, is now exerciseable by the tenant for life (s. 108) as if it were an additional power conferred upon him within s. 109 of the Act, the persons enumerated in s. 30 (1) among the persons who under that section are to be the trustees of the settlement for the purposes of the Act include persons whose qualification is that they possess such a power, with the explanation, afforded by the following sub-section, that sub-s. (1) is to have effect as though the powers therein referred to had not by the Act been made exerciseable by the tenant for life or statutory owner. The following is the description of the persons who are to be trustees for the purposes of the Act as given by s. 30, namely (i) the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons, then (ii) the persons (if any) who are by the settlement declared to be trustees thereof for the purposes of the S. L. Acts, 1882 to 1890, or any of them, or the Act of 1925, or, if there are no such persons then (iii) the persons, if any, who are for the time being under the settlement trustees with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold, *Re Moore*, [1906] 1 Ch. 789, or otherwise dealt with, or with power of consent to or approval of the exercise of such a power of sale ; or if there are no such persons, then (iv) the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the settled land, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not ; or, if there are no such persons, the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement. The same section provides sub-s. (3) that where a settlement is created by will, or a settlement has arisen by the effect of an intestacy, and there would otherwise be no trustees for the purposes of the Act of such settlement, the personal representatives of the deceased are to be the trustees of the settlement until other trustees are appointed ; but a sole personal representative, not being a trust cor-

poration, must in this case appoint another trustee to act with him. See *ante*, p. 123.

Where the exercise of a power or trust for sale is deferred to the death of the tenant for life, who is himself one of the trustees, he is one of the trustees for the purposes of the Act: *Re Jackson's S. E.*, [1902] 1 Ch. 258; *Re Davies & Kent*, [1910] 2 Ch. 35; *Re Johnson's S. E.*, [1913] W. N. 222. See further as to what amounts to a power of sale, *Re Garnett-Orme & Hargreaves*, 25 Ch. D. 595. It will be observed that trustees with power of sale are trustees within the above definition, although the power is subject to a restriction as to consents: cf. *Constable* v. *Constable*, 32 Ch. D. 233. Trustees with power of sale for a limited purpose, *e.g.*, to pay debts or legacies, are not trustees for the purposes of the Act: *Re Coull's S. E.*, [1905] 1 Ch. 712.

Trustees for the purposes of the S. L. Act appointed by the Court in Ireland in respect of property in Ireland are trustees for the same purposes in relation to land in England subsequently purchased out of the proceeds of sale of part of the Irish property: *Re Earl of Arran*, [1912] 2 Ch. 141.

Trustees of compound settlements.

Section 31 provides that persons who are for the time being trustees for the purposes of the Act of an instrument which is a settlement, or is deemed to be a subsisting settlement for the purposes of the Act, shall be the trustees for the purposes of the Act of any settlement constituted by that instrument and any instruments subsequent in date or operation.

Trustees of referential settlements.

In the case of a referential settlement which does not itself contain any appointment of trustees for the purposes of the S. L. Acts, 1882 to 1890, or of the Act of 1925, the trustees for the time being of the settlement to which reference is made are to be the trustees thereof.

Continuance of office of trustees.

Trustees who have been duly constituted trustees for the purpose of the S. L. Acts, 1882 to 1890, or of the Act of 1925, however appointed, or their successors in title (meaning thereby the persons who by appointment or otherwise have become trustees for the purposes of those Acts or any of them) are to remain trustees of the settlement, so long as the settlement subsists.

Appointment of trustees by Court.

By s. 34 of the Act, if there are at any time no trustees of a settlement, or where it is expedient for the purposes of the Act that new trustees be appointed, the Court is empowered to appoint trustees who, and the survivors and survivor of them, while continuing to be trustees or trustee and until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee are for the purposes of the Act to be the trustees or trustee.

As to the subsequent appointment of new trustees, see T. Act, 1925, s. 64, and *ante*, p. 125. As to the endorsement to be made on the principal vesting instrument, *ib.* s. 35 (2); and, as to the necessity of executing a deed of declaration supplemental to the principal vesting deed stating that the persons named in the appointment are the trustees of the settlement for the purposes of the Act, see S. L. Act, 1925, s. 35, and *ante*, p. 151.

As to the jurisdiction of the High Court as regards the appointment of trustees of settled land in Ireland, see *Re Charteris*, [1917] 2 Ch. 257.

The Act, ss. 96—100, contains full provisions for the indemnity and reimbursement of the trustees of a settlement.

Tenant for life in a fiduciary position.

As between the tenant for life or statutory owner and the trustees the former can use his discretion as to investing money: *Re Lord Coleridge*, [1895] 2 Ch. 704, but he is in the exercise of his statutory powers placed by s. 107 in a fiduciary position, as to which see *Wheelwright* v. *Walker*, 23

Ch. D. 752; *Thomas* v. *Williams*, 24 Ch. D. 558; *Re Ailesbury's S. E.*, [1892] 1 Ch. 506; affirmed, [1892] A. C. 356; *Chandler* v. *Bradley*, [1897] 1 Ch. 315; *Middlemas* v. *Stevens*, [1901] 1 Ch. 574; *Gilbey* v. *Rush*, [1906] 1 Ch. 11; and the trustees are justified if they consider that the proposed investment is undesirable in bringing the matter before the Court: *Re Hunt*, [1906] 2 Ch. 11. By s. 110 (1) purchasers dealing *bonâ fide* are protected: see *Hatten* v. *Russell*, 38 Ch. D. 334; *Hurrell* v. *Littlejohn*, [1904] 1 Ch. 689.

Duty of trustees.

Notwithstanding the protection afforded to trustees by s. 97 of the Act, they are not bound to follow the direction of the tenant for life to invest on mortgage: *Re Hotham*, [1902] 2 Ch. 575; or purchase: *Re Theobald*, 19 T.L.R. 536; unless they are satisfied that the direction has been given upon a proper report as to value, and that a proper investigation of title has been made, and that proper advice as to the form of the conveyance has been given. Similarly, the trustees are not bound to apply money in their hands in payment to the solicitors of the tenant for life of the costs of a sale effected by him unless satisfied as to the propriety of the costs charged: see *Re Sir Robert Peel's S. E.*, [1910] 1 Ch. 389. For a form of direction by the tenant for life to the trustees to pay the purchase-money and costs, see *post*, *sub tit.* "DIRECTION AND CONSENT."

Power of tenant for life to sell to or buy from himself.

Section 68 of the Act contains provisions enabling dealings to be effected between the tenant for life and the estate. The settled land may be disposed of to the tenant for life or land may be purchased from him or an exchange of settled land for land belonging to the tenant for life may be effected. In all such cases the trustees of the settlement are given all the powers of a tenant for life in reference to negotiating and completing the transaction which may be exercised in the name and on behalf of the tenant for life.

Powers of Act cumulative.

By s. 108 the powers of the Act are made cumulative, and any concurrent powers contained in the settlement and exercisable by the tenant for life or, save as in that section provided, by trustees with his consent, are kept alive, but so that in case of conflict (as to which see *Earl of Lonsdale* v. *Lowther*, [1900] 2 Ch. 687) the provisions of the Act are to prevail; and notwithstanding anything in the settlement, any power (not being merely a power of revocation or appointment) relating to the settled land thereby conferred on the trustees of the settlement on other persons is made exercisable by the tenant for life or statutory owner as if it were an additional power conferred on the tenant for life within s. 109.

Apportionment of purchase-money on sale of lease or reversion.

Section 79 contains a provision (similar to that in the Lands C. C. Act, 1845, s. 74, and the S. E. Act, 1877, s. 37), enabling the trustees or the Court, in the case of a sale of a lease, or of a reversion expectant on a beneficial lease, to deal with the purchase-money so as to adjust the rights of the beneficiaries, and prevent the tenant for life being injured in the former case, or benefited in the latter by the sale: see *Cottrell* v. *Cottrell*, 28 Ch. D. 628; *Re Simpson*, [1913] 1 Ch. 277. Where in such a case the settlement contains an express power of sale, with the usual provisions for reinvestment of the purchase-money, not providing for this, it would be to the interest of the tenant for life (having regard to that enactment), in the case of a lease to sell under the statutory power, and in the case of a reversion under the express power; in a case of *Willats* v. *Flint*, decided in Chambers, where the property had been sold under the Act of 1882, it was considered that the Court was bound to apply the corresponding s. 34 of that Act, although not in terms directory, and although if the sale had been made under the express power, that provision would not have been applicable.

Notice to

The S. L. Act, 1925, contains a requirement (s. 101), that the tenant for

life or statutory owner shall give one calendar month's notice by registered letter to each of the trustees, and also to their solicitor, if any is known to him, of his intention to make or grant before actually making or granting any sale, exchange, lease, mortgage, charge or option under the Act, or a contract for the same; with a proviso that "a notice under this section shall not be valid unless at the date thereof the trustee is a trust corporation, or the number of trustees is not less than two." Notice of any such intention may be notice of a general intention in that behalf (sub-s. 2); and the tenant for life or statutory owner must (sub-s. 3), upon request by a trustee of the settlement furnish him with such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, or leases effected, or in progress, or immediately intended. Sub-s. (4) provides that a trustee may by writing waive notice in any particular case or generally, and may accept less than one month's notice. Power to waive notice to the solicitor of the trustees is no doubt implied, otherwise the provision would be nugatory, but see Vol. 2, p. 107, note. The necessity for notice in the case of ordinary rack-rent leases (discussed, 37 Sol. J. 76) is dispensed with by s. 42 (5) of the Act. The notice, unless waived, should be given, as required, by registered letter, although the trustees are consenting parties; but *query* whether personal service of the notice is not sufficient; see *Jarvis* v. *Hemmings*, [1912] 1 Ch. 462. The concluding sub-s. (5) provides that a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by the section. It follows that the want of a proper notice will not affect a purchaser unless he has knowledge of the fact, at any rate if he ascertains that at the time of completion there are trustees to whom notice might have been validly given: *Duke of Marlborough* v. *Sartoris*, 32 Ch. D. 616; *Hatten* v. *Russell*, 38 Ch. D. 334; *Mogridge* v. *Clapp*, [1892] 3 Ch. 382; the case of a lease, where the lessee was held to be protected though there were no trustees (see the discussion in the judgments). See further Vol. 2, p. 107, note.

trustees before sale, &c.

Purchaser—how affected by want of notice.

By s. 29 of the Act of 1925, with the saving, as regards land to which the Universities and College Estates Act, 1925, applies, made by sub-s. (6), all land vested or to be vested in trustees on or for charitable, ecclesiastical, or public trusts or purposes, is to be deemed to be settled land; and the trustees, without being thereby constituted statutory owners, are to have in reference thereto, all the powers conferred by the Act upon a tenant for life and upon the trustees of a settlement. In connection with the exercise of those powers, and not so as to affect the mode of creation or administration of the charitable trusts or the appointment or number of the trustees thereof, the statute or other instrument creating the trust or under which the trust is administered, is to be deemed the settlement, and the trustees are to be deemed the trustees of the settlement. Except where the trust is created by a will coming into operation after 1925 no separate instrument will be necessary for giving effect to the settlement.

Charitable and public funds.

Every conveyance of charitable land must state that the land is held on charitable trusts, and a purchaser having notice that this is the case will be bound to see that any consents or orders requisite for authorising the transaction have been obtained: s. 29 (1). The consents or orders necessary on a sale will be the consents or orders which would have been necessary before 1926. Where the land is not vested in managing trustees they or the majority having power to act in the trusts will nevertheless be the persons to exercise the powers of the Act (sub-s. 2) and any legal estate

which they may have power to transfer or create must be transferred or created by them in the names and on behalf of the persons (including the official trustee of charity lands) in whom the legal estate is vested: sub-s. 5.

Sub-s. 4 provides that every assurance of land or of personal estate within the meaning of s. 4 of the Mortmain and Charitable Uses Act, 1888, or, if the charitable uses are declared by a separate instrument, then that instrument, shall in place of the requirements respecting attestation and enrolment prescribed by sub-ss. (6) and (9) of that section, be sent to the offices of the Charity Commissioners within six months after execution or such extended period as the Commissioners may allow, for the purpose of being recorded in the books of the Commissioners.

XXXVI.

CONVEYANCE *of* FREEHOLDS *by* TENANT FOR LIFE *or* STATUTORY OWNER *under a* SETTLEMENT *regularly effected after* 1925. VARIATION *where* SETTLEMENT *was otherwise effected and* TITLE CERTIFIED (*a*). FURTHER VARIATIONS WHERE *the* TRUSTEES *are appointed by the* COURT, *where the* PURCHASE-MONEY *is paid into* COURT, *for a* SALE *of the* MANSION HOUSE *or land occupied with it, and where a* RIGHT OF WAY *is* RESERVED (*a*). VARIATION FOR LAND *in a* COMPULSORY DISTRICT.

Recitals.

Vesting instrument.

PARTIES, A., *tenant for life or statutory owner*, 1; B. & C., *trees* (hrinar called the trees), 2; D., *pchaser*, 3: *Recite vestg deed*, p. 449, f. **35** [*or death of previous este owner, apptmt of exors & probate of his will*, p. 460, f. **12**, *& vesting assent*, p. 461, f. **14**] [AND WHAS by a certificate of conveyancing counsel dated, &c., it was certified that the ppty hby assured was at the date of the sd vestg deed comprised in the sd settlemt, & that the sd A. was the pson in whom the sd ppty ought then to have been vested as tenant for life [statutory owner] & that the sd B. & C. were then the properly constituted trees of the sd settlemt (*a*)]; *Deed of declaration consequent on appointmt of new tree* (*if any*), p. 450, f. **38**; [*Order of Court giving general authority to sell ppal mansion house*, p. 470, f. **12** (*b*)] *Contract*

(*a*) See note on the S. L. Act, *ante*, pp. 581 *et seq.*, and as to the necessity of distinguishing, for purposes of title, between settlements regularly effected after 1925 and settlements not so effected, see *ante*, p. 582. If in the case of title made otherwise than under a settlement regularly effected after 1925, the purchaser has accepted a condition precluding him from investigating the title on the faith of counsel's certificate, as required by the general conditions of sale issued by the Law Society, which an intending purchaser is not of course bound to do, the materials for framing the recitals of title which, apart from the condition, would properly be inserted in the conveyance, will not be forthcoming; and a recital of the certificate should in that case be substituted. It is thought, however, that this condition will not be generally adopted. If the money is paid into Court the trustees need not be parties, but if it is paid to them, they usually are.

(*b*) For alternative recitals where the sale is effected by a conditional contract and confirmatory order, in which case the contract becomes part of the title, see *ante*, p. 472, f. 8. In the case of a settlement made or coming into operation after 1925, neither the consent of the trustees nor any order of court for sale of the principal mansion house will be required unless the settlement expressly provides that the power of sale shall not be

for sale by tenant for life or statutory owner, p. 474, f. **15** (*c*).

Witnesseth. NOW THIS DEED WITNESSETH that in psuance of the recited agrmt (*d*) & in conson of the sum of £—— now pd by the sd D. by the direction of the sd A. to the sd B. & C. as such trees as afsd (the rect whrof they the sd B. & C. do hby acknowe (*e*), & the paymt whrof in mner afsd the sd A. hby acknowes), the sd A. **as tree** by virtue of the powers vested in him by the S. L. Act, 1925, & of every or any other power enablg him in this behalf (*f*) hby grts unto the sd D., *Parcels*, pp. 480 *et seq.* (*g*): To HOLD the same UNTO the sd D. in fee

Habendum to

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exercised without such consent or order: S. L. Act, 1925, s. 65 (1). "The settlement" includes both the trust instrument and the principal vesting deed (see Preliminary note, p. 581). If the provision is not contained in the principal vesting deed, the purchaser will be entitled to assume that no limitation upon the statutory power exists: S. L. Act, 1925, s. 110.

Right of way. (*c*) If a right of way is reserved, add "subjt to such reservon of a right of way as is hrinar contained."

Purchase-money paid into Court. If the purchase-money is paid into Court, continue, "AND WHAS psuant to an Order of the Chancery Division of the High Court of Justice made by Mr. Justice —— on the —— day of —— on the applicon of the sd D., the sum of £—— was pd by the sd D. into Court to the credit of 'In the Matter, &c.'"

(*d*) If the money is paid into Court, say, "in conson of the sum of £—— so pd into Court as afsd by the sd D. (the paymt whrof in mner afsd the sd A. hby acknowes) the sd A. **as tree**, &c."

(*e*) If the trustees are not made parties, say, "the receipt whrof is intended to be acknowed by a memo endorsed on or written at the foot of these psnts & signed by the sd B. & C., & the paymt whrof in mner afsd the sd A. hby acknowes."

If any part of the purchase-money is to be paid to incumbrancers, the trustees should concur in order to direct such payment to be made and to receive the balance: see *Re Norton & Las Casas*, [1909] 2 Ch. 59, and *ante*, p. 589.

(*f*) For a mansion-house, &c., say, "with the consent (hby testified) of the sd B. & C.," or "& with the approval of the Court as appears by the hrinbfe recited order of Court of the —— day of ——."

Reservation of right of way. (*g*) Where a right of way is reserved to go with the settled estate, the habendum will be, "UNTO the sd D. in fee simple, *subjt to leases, &c.*, RESERVING unto A. & his succors in title, & his & their tenants a full & free right, &c.," see p. 487. An easement for an interest equivalent to an estate in fee simple is a legal

simple subjt to the subsistg leases & tenancies affectg the sd respt premes : [*Add if required covt by pchaser to be registered,* p. 524. *Acknowmt by A. as to munimts,* p. 515. *Statemt as to value,* p. 525.] IN WITNESS, &c. purchaser.

[*Schdle of Muniments.*]

XXXVII.

CONVEYANCE *of* FREEHOLDS *by* TENANT *for* LIFE *under* SETTLEMENT *made* BEFORE 1926. *The* TITLE *not having been* CERTIFIED (*a*).

PARTIES, A., *tenant for life,* 1 ; B. & C., *trees,* 2 ; D., *pchaser,* 3. WHAS by a settlemt dated, &c., & made, &c. [being a settlemt made in conson of the marriage, &c.] the ppty hby assured was limited & settled (with other ppty) to uses under wch the sd A. was at the commencemt of the S. L. Act, 1925, benefly entitled to the posson or recpt of the rents & profits throf durg his life : AND the sd B. & C. were appointed to be trees throf for the pposes of the S. L. Acts, 1882 to 1890 : *Vestg deed,* p. 449, f. **34**, *saying,* " it was thrby declared that all the ppty comprised in the recited settlemt was vested," &c. ; *Contract for sale by tenant for life,* p. 474, f. **15**. NOW THIS DEED WITNESSETH that in psuance of the recited agreemt & in conson, &c., the rect, &c., *as in last Prec.* the sd A. **as tree** by virtue of the powers vested in him by the S. L. Act, 1925, & of every or any other power enablg him in this behalf hby grts unto the sd D. *Parcels,* pp. 480 *et seq.* TO HOLD the same unto the sd D. in fee simple. *Acknowmt by A. as to munimts,* p. 515. [*Statemt as to value,* p. 525.] AS WITNESS, etc.

[*Schdle of Muniments.*]

estate under s. 1 of the L. P. Act, 1925, & under s. 65 may be created by reservation so as to vest the legal estate reserved in the person for whose benefit the reservation is made, see *ante,* p. 439.

For a form of consent to the sale by an incumbrancer on the life estate of the tenant for life, see *post, sub tit.* " Direction and Consent."

(*a*) See note (*a*), *supra.*

XXXVIII.

CONVEYANCE *by* STATUTORY OWNERS *of* FREEHOLDS *belonging* ABSOLUTELY *to an* INFANT (*a*). *The* TITLE *not having been* CERTIFIED.

PARTIES, A. & B., *statutory owners & trees of the settlemt*, 1 ; C., *pchaser*, 2. WHAS the ppty hby assured was immediately before the commencemt of the S. L. Act, 1925, vested in K. an infant under the age of 21 yrs for an este in fee simple in posson free from incumbces &, by virtue of the transitional provons of that Act became & is now vested in the sd A. & B., being, psons appointed under s. 60 of the S. L. Act, 1882, to act generally on behalf of the sd K., *or as the case may be* : AND WHAS by a vestg deed dated, &c., & made psuant to s. 35 of the S. L. Act, 1925 (*b*), under the hands & seals of the sd A. & B., it was declared that the ppty hby assured was vested in the sd A. & B. upon the trusts & subjt to the powers & provons upon & subjt to wch as ppty belongg to the sd infant the same ought from time to time thenceforward to be held & it was also declared that the sd A. & B. were the trees of the settlemt of the same ppty subsistg by reason of the infancy of the sd K. ; *Contract for sale*

(*a*) The statutory owners for the purposes of the S. L. Act, 1925 (see ss. 23, 117 (xxvi)), will be the trustees of the settlement or the persons, if any, who under s. 60 of the S. L. Act, 1882, have been appointed to exercise the powers of a tenant for life on behalf of the infant either generally or in any specific matter, who by virtue of the Act become the trustees of the settlement ; or if there are no such trustees, then the public trustee or trustees duly appointed in his place. See S. L. Act, 1925, Second Schedule, para. 3 (1), (3).

If at the commencement of the Act, the property were vested in personal representatives, they would hold it (Second Schedule, para. 2 and para. 3 (2)) on trust, if and when required to do so, to convey it by vesting instrument to the statutory owners. Until such vesting instrument has been executed, the personal representatives will have all the powers conferred by the Act on a tenant for life and trustees of a settlement : S. L. Act, 1925, s. 26 ; and may sell and convey the property to the purchaser who will acquire a good title under the conveyance and will not be concerned to see to the application of the purchase money, *ib.* sub-s. (2). The form of the conveyance in that case would not differ from Prec. XXVIII., *ante*, p. 567.

Where an infant becomes absolutely entitled to real estate under the will of a testator who died after 1925, the will is the trust instrument (see s. 6 and cf. s. 1 (2)) and a sale may be made either by the executors under s. 26 ; or, after they have assented, by the trustees of the settlement, in which latter case the conveyance may be framed as in Prec. XXXVI., *ante*, p. 595,

(*b*) See Second Schedule, para. 3 (4).

p. 474, f. **15**. NOW THIS DEED WITNESSETH that in psuance, &c., & in conson of the sum of £—— now paid by the sd C. to the sd A. & B. (the rect, &c.) the sd A. & B. as trees & in exercise of the power in this behalf vested in them by the S. L. Act, 1925, hby grant unto the sd C. *Parcels*, pp. 480 *et seq.* To HOLD the same unto the sd C. in fee simple. [*Acknowmt as to munimts*, p. 515, f. **1**.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

[*Schdle of Muniments.*]

XXXIX.

CONVEYANCE *of* SETTLED LAND *for* BUILDING PURPOSES *and* SUBSIDIARY VESTING DEED *in respect of a* RENT-CHARGE *reserved as* CONSIDERATION *for the* SALE (*a*). *The* TITLE *being* CERTIFIED *and an* OVER-RIDING RENT-CHARGE *being* DISCHARGED.

A DEED OF CONVEYANCE & SUBSIDIARY VESTING DEED made, &c., btn A., *este owner & tenant for life*, 1 ; B., *pchaser*, 2. WHAS the ppty hby assured is, togr with other ppty formg pt of the —— Settled Estes, subjt to a perpetual yrly rent-charge of £—— p.a. created by a deed dated, &c., & to covts & provons for securg the paymt throf : AND WHAS by a ppal vestg deed relatg to the sd settled estes dated, &c., & made psuant to s. 37 of the S. L. Act, 1925, & the transitional provons of the Second Schdle thereto, btn C. & D. of the one pt and the sd A. of the other pt, it was declared that all the same ppty was vested in the sd A. in fee simple subjt to the sd rent-charge upon the trusts, &c., *continue recital of vestg deed*, p. 449, f. **36**, *saying*, " the settlemt thrin referred to " ; *Certificate of title as in* Prec. XXXVI., *ante*, p. 595 : AND WHAS the sd A. by virtue of the powers vested in him by the S. L. Act, 1925, has agrd with the sd B. for the sale & transfer to him of the este in fee simple of the ppty hby assured in conson of the perpetual yrly rent-charge of £—— hrinar reserved, & of the covts on the pt of the

Recitals.

Over-riding rent.

Agree ment fo sale.

(*a*) So far as regards the reservation of a rent-charge, the conveyance is a subsidiary vesting deed within s. 10 of the S. L. Act, 1925, and must contain the statements and particulars required by sub-s. (3) of that section. A duplicate of the conveyance must be executed by the purchaser and delivered to the tenant for life or statutory owner ; but the execution of the conveyance by the tenant for life or statutory owner is sufficient evidence of such execution and delivery : s. 39 (4).

Witnesseth. sd B. hrinar contained: NOW THIS DEED WITNESSETH & it is hrby declared as follows:—

Grant. **1.** In psuance of the sd agrmt & for the consons afsd the sd A., **as tree,** by virtue of the powers vested in him by the S. L. Act, 1925, & of every or any other power enablg him in this behalf, hby grts unto the sd C., *Parcels*, p. 480 *et seq.* To hold the same unto the sd C., in fee simple, discharged & exonerated from the sd overridg yrly rent-charge of £—— reservg nevless unto the sd A. in fee simple out of the ppty hby grted a yrly rent-charge of £—— to commence from the date of this deed & to be for ever charged upon & issuing out of the ppty hby grted & pd by equal half-yrly paymts without any deduction on the —— day of —— & the —— day of —— in every year.

2. The sd yrly rent-charge of £—— hrinbefe reserved is vested in the sd A. upon & subjt to the same trusts & powers as are declared by the sd vestg deed by refce as afsd with respt to the ppty comprised thrin.

3. The sd C. & D. are the trees of the settmt effected by the sd vestg deed & the trust instrumt thrin referred to for all the pposes of the S. L. Act, 1925.

4. The power of apptg a new tree or new trees of the settmt is vested in the sd A. during his life, *or as the case may be.*

5. The sd B. hby covts with the sd A. that he the sd B. or his succors in title will henceforth pay to the sd A. or his succors in title the sd yrly rent-charge of £—— at the times & in mner hrinbfe appted for the paymt throf free from all deductions.

6. *Covts by B. as to buildg, &c.*

7. Provd always & it is hby declared that if the sd rent-charge of £—— hrinbfe reserved or any pt throf shall at any time be in arrear & unpaid for 30 days after the same shall have become due [whether any formal or legal demand shall have been made or not] then & in any such case it shall be lawful for the sd A. or his succors in title to re-enter upon the ppty hby grted & thenceforth to hold & enjoy the same as if this deed had not been executed (*b*).

(*b*) See S. L. Act, 1925, s. 39 (4) (i). The condition for re-entry may be made to extend to any default in performance of the building covenants: cf. f. **18**, *ante*, p. 523. The right of re-entry being annexed to a legal rent-charge the rule against perpetuities does not apply: see L. P. Act, 1925, s. 4 (3), and *ante*, p. 522.

8. The sd overridg rent-charge of £---- shall henceforth be charged exclusively upon & be payable out of the residue of the ppty charged thrwith & retained by the sd A. in exoneron of the ppty hby grted (*c*).

9. *Clause incorporatg statutory covt by A.* (*d*).

10. *Statemt as to value*, p. 525.] In witness, &c.

XL.

Subsidiary Vesting Deed *on* Purchase *by* Tenant *for* Life *of* Freeholds (*a*) *from the* Executors *of a* Second Mortgagee *selling under the* Statutory Power (*b*) *with the* Concurrence *of the* First Mortgagees.

Parties, A. & B., *exors of second mtgee* (hrinar called the vendors), 1 ; C. & D., *first mtgees*, 2 ; E. & F., *trees of the settlemt* (hrinar called the trustees), 3 ; H., *tenant for life* (hrinar called

(*c*) As to the power of the tenant for life to charge the rent-charge exclusively on the land retained, see S. L. Act, 1925, s. 49 (1) (*c*). In order to incorporate the powers of entry and distress conferred by the L. P. Act, 1925, s. 190, the rent-charge must in the conveyance be expressed to be charged exclusively on the land retained.

(*d*) By virtue of s. 77 (2) of the L. P. Act, 1925, in a conveyance for valuable consideration of part of land affected by a rent-charge which is expressed to be conveyed discharged or exonerated from the entire rent a covenant by the vendor, conveying as beneficial owner, in the terms set out in para. 2 of Part VIII. of the Second Schedule to the Act for payment of the rent-charge by the vendor & for indemnity of the purchaser, is implied as if the entire rent were the balance of the rent, and the words " other than the covenant to pay the entire rent " were omitted. By sub-s. 7 of the same section the covenant implied by the section may be extended by providing that part of the land affected by the rent-charge which remains vested in the vendor shall stand charged with the payment of all money which may become payable under the implied covenant ; and by sub-s. (4) of the same section the same covenant may by express reference to the section be implied by a person conveying as trustee : see further, Preliminary Note, *ante*, p. 439.

(*a*) The purchase being made out of capital money arising under the S. L. Act, 1925, the property must be conveyed by way of subsidiary vesting deed to the tenant for life. See S. L. Act, 1925, s. 10 (1), and note on S. L. Act, 1925, *ante*, p. 583.

(*b*) As to the operation of a conveyance on sale by a mortgagee under his statutory power, see *ante*, p. 553, *note* (*a*).

the purchaser), 4. WHAS under or by virtue of a mtge dated, &c., & made, &c., & by the effect of the transitional provons of the L. P. Act, 1925, a term of 3,000 yrs from the 1st day of Jany, 1926, created out of the fee simple of the ppty hby assured has become vested in the sd C. & D. witht impeachmt of waste by way of mtge for securg paymt to them of the sum of £—— with intt thron as in the sd mtge is expressed (*c*) : AND WHAS by a mtge dated, &c., & made, &c., the ppty hby assured was assured by the sd X. to the use of the sd Y. in fee simple subjt to the recited mtge of the —— day of —— 19—, & subjt to a proviso for the redmon throf upon paymt to the sd Y. of the sum of £—— with intt for the same on a day now past (*d*) : AND WHAS the sd Y. died on the —— day of —— havg by his will dated, &c., apptd the vendors to be the exors throf & the sd will was duly proved by the vendors on the —— day of —— in the —— Probate Registry ; *Agreemt for sale*, p. 474, f. **14** ; *state of mtge debt*, p. 476, f. **23**, *due to first mtgees & agreemt that they should be pd off & concur*, p. 476, f. **24** ; *Vestg deed of settlemt*, p. 449, f. **36**. NOW THIS DEED WITNESSETH as follows :—

1. IN psuance of the recited agrmt & in conson of the sum of £—— now pd by the trees to the sd C. & D. by the diron as well of the vendors as of the pchaser (the rect of wch sum of £—— the sd C. & D. do hby acknowledge as in full discharge of all ppal moys & intt owg to them on the secy of the recited mtge of, &c.) & in conson of the sum of £—— balance of the pchase-moy pd by the trees by the diron of the pchaser to the vendors (the paymt & rect in mner afsd of wch sd sums of £—— & £—— makg togr the sum of £—— the vendors hby acknowledge) the vendors **as mtgees** in exercise of the power for this ppose conferred on them by the L. P. Act, 1925, & of every other power enablg them in this behalf hby grt & convey & the sd C. & D. **as mtgees** & to the intent that the sd mtge term of 3,000 yrs shall merge in the freehold of the ppty hby assured hby assign, surr & release to the pchaser ; *Parcels*, p. 480. To HOLD the same premes unto the pchaser in fee simple upon & subjt to the same trusts & powers as are declared by the ppal deed by refce as afrsd with respt to the ppty thrin comprised.

(*c*) The reference to the L. P. Act, 1925, is here necessary in order to show the title of the first mortgagees to the estate in respect of which they are made parties and which is to be released.

(*d*) As to the sufficiency of this recital, see *ante*, p. 554, note (*c*).

2. The trees are the trees of the settlemt for all the pposes of the S. L. Act, 1925.

3. The power of apptg a new tree or new trees of the ppal deed is vested in the pchaser durg his life, *or as the case may be.*

4. *Acknowmt as to munimts if any retained.*

5. [*Statemt as to value*, p. 525.] In witness, &c.

[*Schdle of Munimts.*]

XLI.

Vesting Deed *on* Purchase *by* Order of Court *of* Freeholds *out of* Capital Money *in* Court *and representing* Settled Land. *The* Settlement *comprising* No Land *in respect of which a* Vesting Deed *could previously have been made* (*a*).

Parties, A., *vendor*, 1; B. & C., *trees for the pposes of the S. L. Act*, 1925 (hrinar called "the trees"), 2; D., *tenant for life* (hrinar called "the pchaser"), 3. *Recite title to freeholds*, p. 462, f. **1**; *Will of X. devisg real este in strict settlemt & appointg B. & C. exors & trees for the pposes of the S. L. Acts; Death of X. & probate*, p. 457, f. **3**: And whas the sd testor was at the

(*a*) The conveyance in this case must be in the form of a principal vesting deed, S. L. Act, 1925, s. 10 (1), and must contain the statements and particulars prescribed by sub-s. (2) of that section. Where the money in Court represents land taken under the Lands C. C. Act, 1845, the recital of title to the money may run as follows: "And whas the sum of £—— Bank annuities now standg in Court to the credit of *Ex parte* the Co. the acct, &c., represents pt of the sum of £—— wch was in the yr —— pd into Court to the like credit & acct by the Co. as the pchase-moy of certain lands wch X., late of —— who died on the —— day of —— by his will dated, &c., devised to certain uses, under wch the sd C. is now tenant for life & wch were taken by the Co. under the powers of the —— Act wch incorporates the Lands C. C. Act, 1845." A principal vesting deed would in that case have been executed in respect of the land remaining subject to the settlement, and the conveyance would be in the form of a subsidiary vesting deed. As to the application of money in Court under the Land Clauses and other Acts, see S. L. Act, 1925, s. 76.

time of his death seised in fee simple of the lands so devised in strict settlemt as afsd." And whas in obedience to certain orders of the Chancery Division of the High Court of Justice made in an action, *re* X., deced, Z. *v.* Y., *reference to record*, being an action for administerg the este of the sd X., the lands so devised in strict settlemt as afsd have been sold & the proceeds throf applied in or towards paymt of the debts & funl & testamentary expses of the sd X., & in paymt of the duties wch became payable on his death in respt of the sd lands & in or towards paymt of some of the costs of the sd action, & in makg certain investmts: And whas the whole of the debts, funeral & testamentary expses of the sd X. have been pd: And whas there now remains in Court to the credit of the sd action, the acct of, &c., the sum of £——, Bank annuities representg pt of the moys risg from the sd sales: And whas the sd A. has agrd with the sd D. to sell to him at the price of £——, to be pd out of the proceeds of sale of the sd Bank annuities, the ppty hby assured for an este in fee simple in posson subjt to the approval of the Chancery Division being obtained: And whas by an order of the Chancery Division of the High Court of Justice dated the —— day of —— made by Mr. Justice —— in the sd action [matter] on the petition (*c*) of the sd C., the Judge being of opinion that the pchase of the ppty in the petition (*c*) mentd (being the ppty hby grted) was a fit & pper pchase (*d*) whrin to invest the sum of £—— to be raised as thrinar mentd, & that a good title had been made to the sd ppty, & that a deed thrin mentd being this deed, identified by the signature of one of the Masters attached to the Chambers of the sd Judge in the margin hrof was a pper convce of the sd ppty, & that the sd A. was the pper pson to execute such deed, & to receive the sd pchase-moy of £——. It was ordered

(*c*) Where the purchase-money exceeds £1,000 the order for payment is made on petition, but where it does not exceed £1,000 the order for payment is made on summons, R. S. C., O. 55, r. 2 (2); but an application for investment under the Lands C. C. Act, 1845, and any other Act passed before 14th August, 1855, where the purchase-money of any property sold is directed to be paid into Court, is made by summons, O. 55, r. 2 (7), whatever the amount of the money, *Ex p. Mayor of London*, 25 Ch. D. 384. In this case for "petition" substitute "applicon."

(*d*) The order in the text was not drawn up till the title was approved. For a form of order approving of the purchase before the title is approved, see Seton, 7th ed., 1652. On a purchase by the Court the title is, in the absence of special circumstances, investigated as on an open contract.

that upon the execution of these psnts by the sd A. (such execution to be verified by affidavit) the funds in Court shd be dealt with as mentd in the schdle thrto, by wch schdle it was directed that the sum of £—— to be raised by the sale of a sufficient pt of the sd sum of £—— Bank annuities shd be pd (*e*) to the sd A. NOW THIS DEED made in psuance of the last mentd order, & in conson of the sum of £—— to be pd to the sd A. psuant to the sd order (the receipt whrof by the sd A. is intended (*f*) to be acknowed by a memo to be endorsed on these psnts & signed by him), WITNESSETH & it is hby declared as follows :— Witnesseth.

1. The sd A. **as benefl owner** hby grts unto the sd C.; *Parcels, habendum unto C. in fee simple.* p. 500, f. **2.** Habendum.

2. The trees as trees hby declare that the sd premes are vested in the sd C. in fee simple upon the trusts & subjt to the powers & provons upon & subjt to which under the sd will of the sd X. or orwise the same ought to be held from time to time.

3. The trees are the trees of the settlemt created by the sd will for all the pposes of the S. L. Act, 1925.

4. The power to appoint a new tree or new trees of the sd settlemt is vested in the sd C. durg his life (*or as the case may be*).

5. [*Statemt as to value*, p. 525.]

In witness, &c.

(*e*) Where a deposit is paid say, "as to £—— pt throf to the sd —— in paymt of the sum of £—— so pd by him as a deposit & as to £—— residue throf to the sd A."

(*f*) Where a purchase is made out of funds in Court the conveyance is usually executed before the purchase-money is paid: but an order made on the 16th Oct., 1908, in *Colyer* v. *Ferguson*, 1874, C. 203, authorised a conveyance containing a present receipt. The purchaser must see that the endorsed receipts are signed. As to enforcing execution of the conveyance, see Seton, 7th ed., 424.

XLII.

CONVEYANCE *by* HUSBAND *and* WIFE *of the* WIFE'S FREEHOLDS *under the* OLD LAW (*a*) *to a* SUB-PURCHASER, *to whom the* BENEFIT *of the* CONTRACT *has been* TRANSFERRED *pending completion at an* ADVANCE *in* PRICE (*b*).

Recitals. *PARTIES*, A. & B., "his wife," *vendors*, 1; C., *origl pchaser*, 2; D., *sub-pchaser*, 3. WHAS the sd A., & B. his wife, in right

Married women's powers of disposition.

(*a*) If the marriage took place or the property was acquired by the wife after 1882, she would have an absolute power of disposition as a *feme sole* under the M. W. P. Act, 1882, ss. 1, 2, and 5; *Re Drummond & Davie*, [1891] 1 Ch. 524. If both the marriage and the acquisition of the property were before 1883, and the property were not settled to the wife's separate use, the wife's power of disposition is still governed by the old law; but she is nevertheless able to contract as a *feme sole* under s. 1 of the above Act as modified by the Act of 1893, s. 1 (as she also was to a more limited extent under the old law), with respect to her separate estate; and her implied covenants for title and acknowledgment and undertaking as to muniments operate accordingly. If, in the same case, the property had been settled to the wife's separate use, she would have become absolutely entitled as estate owner on the 1st of January, 1926, under the transitional provisions of the L. P. Act, 1925, First Schedule, Part II, para. 3; unless she were restrained from anticipation, in which case the instrument under which she acquired the property will be a settlement and the property settled land (S. L. Act, 1925, ss. 1 (1) (iv) and 20 (1) (x).

In the case of the above precedent, as the wife's rights are governed by the old law and the property is not settled to her separate use, the husband and wife are seised in right of the wife. They are entitled between them to the legal estate in the property in fee simple, and are therefore estate owners within the meaning of the L. P. Act, 1925, s. 1; but their seisin is not that of tenants by entireties, tenants in common or joint tenants, and is not, therefore, affected by that Act. Before 1926, the wife was enabled under the Fines and Recoveries Act, 1833, s. 77, to dispose of the property by deed acknowledged with the concurrence of her husband, and this power of disposition is preserved to her by the L. P. Act, 1925, s. 167, without the necessity of any acknowledgment.

The successive interests of the husband and wife are incidents of their common law tenancy and do not constitute a settlement within the definition contained in the S. L. Act, 1925, s. 1. Neither husband nor wife is a tenant for life or a person having the powers of a tenant for life within ss. 19 and 20 of the same Act.

Sub-sales. (*b*) As to sub-sales, see Dart, 7th ed., 536; and *ante*, p. 475, note (*b*). As to the stamp, see the Stamp Act, 1891, s. 58 (4); Though a purchaser may require the conveyance to be made to a nominee, he cannot require it to be made so as to expose the vendors to committing a breach of trust: *Delves* v. *Gray*, [1902] 2 Ch. 606.

of the sd B., are seised of the ppty hby assured in fee simple free from incumbces (*c*), *Contract for sale by A. & B. to C., & sub-contract for sale by C. to D.*, p. 475 : NOW THIS DEED WITNESSETH, that in psuance of the sd respt agrmts, & in consn of the sum of £—— to the sd A. & B., & of the sum of £—— to the sd C., resptly pd by the sd D. (the rect of wch respt sums the sd A., B., & C. do resptly hby acknowe), the sd A., **as benefl owner**, with the concurrce of the sd B., at the request of the sd C., hby grts & the sd B., **as benefl owner**, & the sd C., **as benefl owner**, do resptly hby grt & confirm unto the sd D., *Parcels*, p. 480 ; *Habendum to D., in fee simple*, p. 500. [*Acknowmt & undertakg by A. as to Munimts belong to B.*, p. 515.] [*Statemt as to value*, p. 525.] IN WITNESS, &c.

Witnesseth.

Grant.

(*c*) This recital of seisin affords all the information necessary upon which to found the conveyance which follows, and is accordingly substituted for the usual recital of estate ownership which would not do so. A purchaser dealing with a married woman is not bound to inquire into the existence of a settlement : *Lloyds Banking Co.* v. *Jones*, 29 Ch. D. 221 ; *Walker* v. *Quinn*, [1907] 2 Ch. 104 ; *Coleman* v. *London County & Westminster Bank*, [1916] 2 Ch. 353.

XLIII.

ASSIGNMENT *of* LEASEHOLDS *held under* SEVERAL LEASES *by a* TRUSTEE *under a* SCHEME *of* ARRANGEMENT *in* BANKRUPTCY, *with the* CONCURRENCE *of the* DEBTOR (*a*), *to* TWO PURCHASERS *a* MORTGAGE *to a* BUILDING SOCIETY *being paid off out of the* PURCHASE-MONEY *which is* PROVIDED *by the* PURCHASERS *in* EQUAL SHARES. VARIATIONS *where the* MORTGAGE *was made to a* SOCIETY *formed under the repealed* BUILDING SOCIETIES ACT, *and since* INCORPORATED *under the* BUILDING SOCIETIES ACT, 1874 (*b*).

Recitals.

PARTIES, A., *tree for creditors*, 1; B., *debtor*, 2; C. & D., *pchasers*, 3. WHAS the sd B. was at the date of the receivg order next hrinar recited the este owner of the leasehold ppty described in the First Schedule hrto in respt of the sevl terms of yrs grted, &c., *continue as in* f. **5**, p. 463: AND WHAS under or by virtue of the mtge & fur charges particulars whrof respvly are contained in the Second Schedule hrto [& by the effect of the transitional provons of the L. P. Act, 1925] the sevl derivative terms thrin mentd, being sub-terms limited respvly out of the sd sevl terms of yrs grted respvly by the sd leases, became vested in the —— Buildg Society by way of mtge for securg paymt to the sd society of the sevl sums with intt thron respvly mentd in the same schdle: AND WHAS a receivg order in bkpty was made agst the sd B. on the —— day of ——, 19—: AND WHAS under a proposal for a scheme of arrangemt of the affairs of the sd B. duly accepted by his creditors & approved by the —— Court as appears by the certfe dated the —— day of —— of the Official Receiver (*c*), the sd A. was appted the tree of the ppty of the sd B.: *Sale by auction*, p. 472,

(*a*) See the Bankruptcy Act, 1914, s. 16. The debtor's concurrence is of course not necessary: cf. Prec. XXXV., *ante*, p. 578. As to the title of the debtor to property acquired by him after the approval by the Court of the scheme, see *Re Croom*, [1891] 1 Ch. 695; and as to the circumstances in which the Court will refuse approval of a scheme, see *Re Pilling*, [1903] 2 K. B. 50; *Re Flew*, [1905] 1 K. B. 278.

As to private deeds of arrangement see the Deeds of Arrangement Act, 1914, and the Land Charges Act, 1925, ss. 8, 9.

(*b*) See Vol. 2, p. 131, note (*c*).

(*c*) See Bankruptcy Act, 1914, s. 16 (2) (14), and cf. f. **2**, *ante*, p. 468.

f. **7.** And whas the sd C. bid at the sale on behalf of himself & the sd D., & the sd C. & D. are desirous that the sd premes shl be assned to them as joint tenants in mner & upon the trusts hrinar appearg: [And whas the sd —— Bldg Society was on the —— day of —— incorporated under the Bldg Societies Act, 1874 [Bldg Societies Acts]]; And whas the sum of £——, being the amt due to the sd Bldg Society under their sd respt mtge secs has, at the request of the sd A. & B., been pd by the sd C. & D. to [the trees of] the sd Society, & the sd mtge secs have been vacated by a statutory receipt for the sd sum of £——, dated, &c., endorsed on the deed of mtge numbered —— in the sd second schdle hrto, & signed by the sd trees, *or*, " under the seal of the sd Bldg Society, countersigned by the secretary [manager] " (*d*); *Agrmt of B. to concur*, p. 477; NOW THIS DEED WITNESSETH as follows:

Discharge of mortgage to building society.

Witnesseth.

1. In psuance of the sd respve agrmts, & in conson of the sum of £—— pd by the sd C. & D. in mner followg namely, £—— pt throf to the [sd trees of the] sd —— Bldg Society in mner afsd, & the sum of £—— the residue throf to the sd A. (the paymt & receipt in mner afsd of wch respve sums of £—— & £——, makg togr the sd pchase-moy of £——, the sd A. & B. do resply hby acknowe), the sd A. **as tree**, hby assns, & the sd B., **as benefl owner**, at the request of the sd A., hby assns & confirms unto the sd C. & D., *Parcels by reference to leases in schedule*, p. 485: To hold, &c., p. 504, f. **16**, upon trust to sell the same & to stand possessed of the net proceeds of sale after paymt of costs & of the net rents & profits until sale after paymt of all outgoings upon trust for the sd C. & D. as tenants in common in equal shares.

Assignment.

2. Pendg the sale of the whole of the ppty hby assured psuant to the trust for sale throf hrinbefore declared the sd C. & D. or

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(*d*) See 6 & 7 Wm. 4, c. 32, s. 5; the Building Societies Acts, 1874 to 1894; and the L. P. Act, 1925, s. 115 (1) (7) and (9). Under the last-mentioned Act a receipt endorsed on, written at the foot of, or annexed to a mortgage for all money thereby secured will operate as a surrender of the mortgage term so as to merge the same in the reversion immediately expectant thereon. As to the discharge of a charge on registered land to a building society, industrial provident society, or a friendly society, see L. R. Rule 152. As to the vesting of property held in trust for a society incorporated under the Act of 1874, see s. 27 of that Act and s. 4 of the Act of 1877. A building society may not advance money on a second mortgage unless the first mortgage is in its favour: Building Societies Act, 1894, s. 13. See also *ante*, p. 307, note (*f*), and Vol. 2, p. 131, note (*c*).

Reconveyance of mortgage to building society.

other the trees for sale for the time being throf shl have the same full & unrestricted power of mtging the sd ppty or any pt throf for any ppose & in any mner & of leasg or orwise dealg thrwith in all respts as if they were absolute owners throf (*e*).

3. [*Statemt as to value*, p. 525.]

IN WITNESS, &c.

[*Schedules.*]

XLIV.

ASSIGNMENT *of* LEASEHOLDS *for* YEARS *to a* BENEFICIARY *on a* PURCHASE *by* TRUSTEES *under a* POWER *in a* SETTLEMENT (*f*).

PARTIES, A., *vendor*, 1; B. & C., *trees*, 2; D., *beneficiary*, 3.

Recitals. *Recite title to leaseholds*, p. 463, f. **4**: AND WHAS by as ettlemt dated, &c., to wch this deed is suppl (being the settlemt made on the marre of the sd D.) the sd B. & C. who are the psnt trees throf have power with the consent of the sd D. to invest moys subjt to the trusts throf in the pchase of leasehds for yrs to be assned to the sd D. Upon the trusts & subjt to the powers & provons hrinar declared concerng the same: AND WHAS the sd B. & C. in exercise of the sd power have with the consent of the sd D. agrd with the sd A. for the pchase of the sd term of yrs in the sd ppty, for the sum of £—— being pt of the ppty

Witnesseth. in the sd settlemt called the husbd's trust fund; NOW THIS DEED WITNESSETH that in psuance, &c., *conson & receipt*, p. 478, the sd A., **as benefl owner**, hby assns unto the sd D., *continue as in Prec. V. at* p. 534 *to the end of the precedent, adding after the habendum*, "Upon the trusts & subjt to the powers & provons applicable thrto by virtue of the sd settlemt." [*Statemt as to value*, p. 525.] IN WITNESS, &c.

[*Schedule.*]

(*e*) See the mortgagee's protection clause in Trustee Act, 1925, s. 17.

(*f*) This assumes that the trustees have power to take purchased leaseholds in the name of a beneficiary: see Vol. 2, *sub tit.* "SETTLEMENTS."

XLV.

ASSIGNMENT *by* ENDORSEMENT *on the last* PRECEDENT *to the* TRUSTEES *of a* SETTLEMENT *of* LEASEHOLDS *for* YEARS *purchased under a* POWER *and conveyed to a* BENEFICIARY.

PARTIES, D., *beneficiary*, 1; B. & C., *trees*, 2; WITNESSETH that in psuance of the trusts declared by the within written deed the sd D., as benefl owner, hby assns unto the sd B. & C. the premes comprised in & demised by the within recited lease; *habendum*, p. 504, f. **16**, Upon the trusts & with & subjt to the powers & provons upon, with & subjt to wch the same ought to be held by reason of the same having been pchased with moys subjt to the trusts of the within recited settlemt. IN WITNESS, &c. Parties. Habendum.

XLVI.

ASSIGNMENT *of* LEASEHOLDS *sold in* LOTS *to* PURCHASER *of* LARGEST LOT *on* TRUST *to grant* UNDERLEASES *to other* PURCHASERS (*g*).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. *Recite lease*, p. 451. [*Devolution of title to A.*, p. 453.] AND WHAS the sd A. has recently sold the premes comprised in the sd lease to the sevl psons in the respve lots for the respve sums, & subjt to the apportd rents specified in the first schdle hto; & it was agrd on the sd sales that the sd A. as the este owner of the premes comprised in the recited lease in respt of the sd term of —— yrs thrby grted shd transfer his este in all the sd premes to the sd B. & that he shd execute to each other pchaser such underlease of his lot as hrinar mentd: NOW THIS DEED WITNESSETH, &c., *conson* (the receipt, &c.), the sd A., as benefl owner, hby assns unto the sd B., *Parcels by reference to lease*, p. 485: TO HOLD the same, *subjt to entire rent & covts, &c., of the lease*, p. 504, f. **16**; as to the premes comprised in lot 1, as described in the first schdle hto, for the absolute use & benefit of the sd B., And Recitals. Sale in lots. Witnesseth. Habendum.

(*g*) See *ante*, pp. 326, 327.

Upon trust to grant under-lease.

as to each of the other lots described in the sd schdle UPON TRUST at any time at the request of the sd A., or his succors in title, to execute a pper underlease throf, unto & at the cost of the pchaser throf, to commence from the —— day of ——, & to be for the residue of the sd term of —— yrs, except the last day of such term, at the yrly rent mentd in the schdle hto as apportioned on such lot, such rent to commence & be computed from the sd —— day of ——, & such underlease shl contain the covts & provons followg (that is to say) :—*give epitome of covts, &c., see next Precedent, or,* " such underlease shl be in the form conted in the second schdle hto," with such modificons as the circumstances of each case may require : AND IT IS HBY AGRD & declared that until each underlease shl be grted, the sd B. shl stand possed of the lot to be comprised thrin, upon trust for the sd A., subjt in equity to the paymt, pformce & observce, by the sd A., & his succors in title, of the rent & covts by the lessee, & condons to be reserved by & contained in such underlease as hrinbfe provd, & subjt to the agrmt for the sale throf hrinbfe mentd. [*Statemt as to value,* p. 525.] IN WITNESS, &c.

Declaration of trust.

THE FIRST SCHDLE ABOVE REFERRED TO.

Description of property.	Name of purchaser.	Apportioned rent.	Purchase-money.

[*Second Schdle containg form of underlease* (*a*).]

(*a*) See next Precedent.

XLVII.

UNDERLEASE *to a* PURCHASER *of* PART *of* LEASEHOLDS *held under one* LEASE, *and sold in* LOTS. *The* LEASE *having been* ASSIGNED *to another* PURCHASER *at the same sale. To accompany* LAST PRECEDENT.

PARTIES, A., *vendor*, 1; B., *pchaser of one lot, assignee of lease*, 2; C., *pchaser of anor lot*, 3. *Recite lease*, p. 451, *of* "the ppty hby demised togr with other ppty;" *Devolon of title, if any, to A.*, p. 453, AND WHAS the sd A. has agrd with the sd C. for the sale to him for the sum of £—— of the ppty hby demised, wch form pt of the premes comprised in the sd lease, at the apportioned rent of £——: AND WHAS upon the treaty for the sd sale it was agrd that the sd A. as este owner of the premes comprised in the recited lease in respt of the sd term of —— yrs thrby grted shd transfer his este in all the sd premes to the sd B., for all the residue of the sd term of —— yrs thrby grted, & subjt to the sd rent thrby reserved, & to the covts & condons thrin contained, & that the sale of the portion of the premes agrd to be sold to the sd C., as afsd, should be effectuated by the sd B. executg an underlease throf to the sd C., at the sd apportioned rent of £—— for the term, & subjt to such covts & provons & orwise as hrinar expressed: AND WHAS in psuance of the sd arrangemt, the sd premes comprised in the sd lease have been assned by the sd A. to the sd B., by an assnmt dated, &c., & made, &c., but upon trust to grt such underlease to the sd C., as hrinbfe mentd: NOW THIS DEED WITNESSETH as follows:—

Recitals.

Agreement.

Assignment.

Witnesseth.

1. IN PSUANCE of the sd agrmt & in conson, &c., *pchase-moy pd to A. by C.* (the receipt, &c.), the sd B., by the direction of the sd A., hby demises, & the sd A. hby confirms unto the sd C., *Parcels*, p. 480, "being pt of the premes comprised in the sd lease:" To HOLD the same UNTO the sd C., henceforth for all the residue now unexpired of the sd term of —— yrs grted by the sd lease, except the last day throf; *Reservon to B. of rent apportioned on C.'s lot.*

Demise.

Habendum.

2. *Covenants by C. with B. to pay such apportioned rent, & other covts so far as the same affect the ppty demised to C., & to indemnify B. against breaches of such covts, & not to forfeit the head lease, post, sub tit.* "LESSEES COVTS."

3. *Power of re-entry by B. on the demised premes on non-paymt by C. of his apportioned rent, or breach of any covt by him,* see *post, sub tit.* "LEASES."

4. *Covenant by B. with C. for quiet enjoymt* (*a*), see *post, sub tit.* "LEASES."

[**5.** *Acknowmt & undertaking by B. as to production, &c., of lease,* p. 515.]

IN WITNESS, &c. (*b*).

XLVIII.

UNDERLEASE *for effectuating the sale to a* LIMITED COMPANY *of* MINING PROPERTY (*c*) *held under a* LEASE *containing a* COVENANT *against* ASSIGNING *or* UNDERLETTING *without the* LESSOR'S LICENCE, *which is refused as to an* ASSIGNMENT: *the* PURCHASE-MONEY *being payable by* INSTALMENTS. ASSIGNMENT *of* FIXED MACHINERY, *&c., belonging to the* VENDOR.

Parties. *PARTIES,* A., *vendor,* 1; The —— Co, Ltd., whose registered office is situate at —— (being a Company registered under the

Recitals. Companies Acts, 1908 to 1917 (*d*), and hrinar called the Co), 2. *Recite lease of mining ppty,* p. 452, *containg a power to the lessee to determine it on notice, & a covt agst assng or underlettg witht licence:*

Agreement for sale. AND WHAS the sd A. has agrd with the Co for the sale to them of the sd premes comprised in the sd lease, & the fixed

Covenants for title. (*a*) As this is a "demise at a rent," covenants for title, &c., cannot be implied by making A. and B. demise, &c., as "trustee" or "beneficial owner," see the L. P. Act, 1925, s. 76 (5); but as the purchaser, although only a lessee, would have the benefit of the vendor's covenants contained in the assignment to B. (see the Act, s. 76 (6)) no further covenants on the part of A. are required, and the ordinary lessor's covenant by B. for quiet enjoyment will suffice. As to the costs, see *Re Webb,* [1897] 1 Ch. 144.

(*b*) If the lease is registered notice of the underlease, if the term exceeds 21 years, must be registered: L. R. Act, 1925, s. 22 (2) (*a*), and if the underlease is for a term of 40 years or more, it must be registered if the land is in a compulsory district: L. R. Act, 1925, s. 123

(*c*) As to the notice necessary on change of ownership of a mine, see Coal Mines Act, 1911, s. 19

(*d*) *Or* "the Companies C. Act, 1908," as the case may be.

machinery thron for the sum of £—— & of the movable machinery & plant & mining stk thron wch are transferable by delivery for the sum of £——: *Recite agrmt for payment of purchase money by instalments*, p. 475, f. **19**: AND WHAS it has been agrd that the paymt of such four instalmts of pchase-moy & intt shl be secd by a lien or charge upon the sd leasehd premes, & by the covt of the Co as hrinafter expressed (*e*) [*or, if so intended*, shl be secd by the covt of the Co, but that the sd A. shl not retain any lien or charge upon the sd leasehd or other premes for the same]: AND WHAS the landlords of the premes demised by the sd lease have refused to consent to an assnmt throf but have given their consent in writg to the underlease of the same premes hby made, & it has been agrd that the sale throf to the Co shl be effectuated by the grt of such underlease & orwise in mner hrinar expressed: AND WHAS the sd movable machinery & plant & ming stk are intended to be delivered by the sd A. to the Co on paymt by them to him of the sd sum of £—— for the pchase throf (*f*): NOW THIS DEED WITNESSETH as follows:—

Security for payment of instalments.

Refusal by landlords to consent to assignment.

Movable machinery to be delivered.

Witnesseth.

1. IN PSUANCE of the sd agrmt, & in conson of the sum of £——, pt of the sd pchase-moy of £——, *the price of the leasehds & fixtures*, now pd by the Co to the sd A. (the receipt, &c.), & of the covt by the Co hrinar contained for paymt of the residue of the sd last-mentd pchase-moy, & intt for the same, the sd A. hby demises unto the Co ALL & singr the lands, messes, bldgs, mines, minls, liberties, licences, powers, rights, & premes comprised in, or grted or demised by the hrinbfe recited lease, TO HOLD the same UNTO the Co & their assns for the residue now unexpired of the sd term of —— yrs, except the last day throf, determinable nevertheless, as hrinar mentd, SUBJT to the exceptions & reservons contained in the sd lease, & SUBJT also to & charged with the

Demise.

Parcels (*g*).

Habendum.

(*e*) The unpaid purchase-money would usually be secured by a mortgage.

(*f*) The purchase-money should be apportioned and the movable plant, &c., excluded from the assignment, to save stamp duty: see *post*, p. 670, note (*c*). The value of the tenant's fixtures, which necessarily pass with the land, would have to be included in the price for the purpose of the *ad valorem* stamp: see *Lee* v. *Gaskell*, 1 Q. B. D. 700; *Underwood, Ltd.* v. *Burgh Castle, &c., Syndicate*, [1922] 1 K. B. 123, and note, p. 665.

As to apportionment for stamp duty.

(*g*) See another form of parcels by reference to a mining lease, *ante*, p. 485, f. 18.

paymt to the sd A., of the sd four unpaid instalmts of the sd pchase-moy of £——, amtg to £—— each & intt psuant to the covt of the Co hrinar contained [*or, if so intended,* free & discharged from any lien or charge in favour of the sd A., for the sd four unpaid instalmts of the sd pchase-moy, or the intt for the same], YIELDG & PAYING therefor unto the sd A., durg the sd term hby grted, the same or the like rents & royalties as were by the hrinbfe recited lease reserved or made payable in respect of the sd premes, such rents & royalties to be pd or rendered upon or at the same or the like days or times & in the mner thereby provd : AND SUBJT to the pformce & observce by the Co & their assns of the covts on the pt of the lessees & provons in the sd lease contained (other than the respective covts for paymt of the sd rents & royalties, & restrictive of the right of the lessees to assn, underlet, or pt with the sd premes).

Reddendum.

Declaration of trust by vendor.

2. THE SD A., so far as he is authorised so to do witht the lessor's consent, hby declares that he will stand possed of the sd last day of the sd term of —— yrs grted by the sd lease IN TRUST for the Co.

Covenants by company.

3. THE Co hby covt with the sd A. in mner followg (that is to say) :—

To pay rent.

(i.) That the Co will, durg the sd term hby grted, pay or render to the sd A., the sevl rents & royalties hrinbfe reserved on or at the respective days or times, & in the mner, on at or in wch the same are or ought to be pd or rendered as afsd clear of all deductions :

Perform covenants.

(ii.) That the Co will, durg the sd term hby grted, pform & observe all the covts & agrmts by the lessee & provons contained in the sd lease (except as hrinbfe mentd) :

Indemnify vendor.

(iii.) That the Co will at all times keep indemnified the sd A. & his succors in title against all actions, proceedgs, costs, damages, claims, demands, & liability for or in respt of any breach of any of the sd covts, agrmts, & provons (except as afsd) :

Covenants by vendor.

4. THE SD A. hby covts with the Co, in mner followg (that is to say) :—

To pay rent.

(i.) That the sd A. will durg the sd term hby grted duly pay or render the respective rents & royalties reserved by, or payable under the sd lease :

(ii.) That the sd A., & his succors in title will, at any time, if requested so to do by the Co or their succors in title, use his or their best endeavours at the expse of the Co to procure the licence of the landlords to an assnmt to or in trust for the Co or their succors in title of the premes hby demised : & in the event of such licence being obtained, will execute such assnmts or instrumts as may be required by & at the expse of the Co or their succors in title for assng or assurg the sd premes to or in trust for the Co or their succors in title : Endeavour to procure licence to assign. To assign.

(iii.) That the sd A., or his succors in title will at any time, if requested to do so by the Co or their succors in title, & at their expse, for the ppose of determing the sd lease, give such notice to the landlords throf as is in that behalf provided by the sd lease, but except upon such request of the Co or their succors in title, will not give any such notice whrby the sd lease may be determined : Give notice on request to determine.

(iv.) That the sd A., & his succors in title will not at any time except by givg such notice upon request to determine the same as afsd, do or knowingly suffer any act or thing whrby the sd lease may be invalidated or become void or liable to forfeiture : Not to invalidate lease.

5. *Covenants by A. for title (a) :*

6. In further psuance of the sd agrmt & for the consons afsd, the sd A., **as benefl owner**, hby assns unto the Co All such (if any) of the bldgs, erections, furnaces, forges, foundries, rails, trams, turntables, weighing machines, waggons, steam & other engines, gins, machinery, & fixtures, in, upon, or affixed to the sd premes comprised in the sd lease, as are the absolute ppty of the sd A., but are incapable of being transferred to the Co by delivery, To hold the same Unto the Co absolutely : Assignment. Fixed machinery. Habendum.

7. The Co hby covt with the sd A., that the Co or their Covenant

(a) This being a demise at a rent, is not within the L. P. Act, 1925, s. 76, see sub-s. 5, and *ante*, p. 509; so that express covenants for title must be inserted; or the statutory covenants might be expressly incorporated by making A. demise "**as benefl owner**, to the intent that the same covts by the sd A. for the title to & further assurce of the premes hby demised, may be implied as if a demise at a rent were expressly included in section 76 of the L. P. Act, 1925." Covenants for title in lease.

by company to pay unpaid purchase-money.

succors in title will pay to the sd A., or his succors in title, the sum of £——, being the balance remaing unpd of the sd pchase-moy, with intt thron at the rate of £—— p.c. p.a., to be computed from the date of these psnts, in mner followg (that is to say) :—the sum of £——, pt of the sd ppal sum, on the —— day of —— next, &c., & the intt on the ppal sum for the time being remaing unpaid to be pd with each of such instalmts of ppal.

[8. *Acknowmt by the Co to A. as to production of lease*, p. 515.]

In witness, &c.

XLIX.

ASSIGNMENT *of an* Agreement *for* Building Leases.

Recitals.

Building agreement.

Parties, A., *vendor*, 1 ; B., *pchaser*, 2. *Recite agrmt by K. to grant a lease or leases to A.* " of certn pieces of land thrin described, situate at, &c., for the term of —— yrs from the —— day of —— at the yrly rent or rents thrin mentd, & subjt to the covts by the sd A., & stipulons thrin contained for the erection of bldgs & executg works on the sd pieces of land & orwise as thrin mentd : " And whas the sd A. has commenced the erection of bldgs & other works on the sd lands, psuant to the sd agrmt. And whas the sd A. has agrd with the sd B. for the absolute sale to him for the sum of £—— of the benefit of the sd agrmt, togr with the materials & plant hby assned (*a*) : NOW THIS DEED WITNESSETH that in psuance, &c., *conson* (the receipt, &c.), the sd A., as beneft owner, hby assns & transfers unto the sd B. All that the hrinbfe recited agrmt of, &c., & all benefit throf ; And also all materials & plant belonging to the sd A., &c., & now being on the land comprised in the sd agrmt & used or intended to be used for the pposes of the bldgs & works thrin mentd, To hold the same Unto the sd B. absolutely : *Irrevocable apptmt by A. of B.*, " & the psons deriving title

Commencement of buildings.

Agreement for sale.

Witnesseth.

Assignment of agreement.

Plant, &c.

Power of attorney.

(*a*) If the licence of the freeholder is required to the assignment the variations in the recitals will be similar to those in the assignment of a lease, see *ante*, p. 533, note (*f*).

under him (*b*)," *the attorney & attorneys of A.*, p. 206, " to give any notices under the sd agrmt," *to give receipts*, p. 207, f. **6**, *for moys*, " wch shl become payable to the sd A., under the sd agrmt " ; And also to execute & do all such deeds, instrumts, & acts as shl be or appear necy or pper to enable the sd B., & the psons derivg title under him, to carry out & obtain the full benefit of the sd agrmt, & of the lease or leases to be grted psuant thrto as effectually as the sd A. cd have done, & genlly to act in the premes as to him or them shl seem pper (*c*) : *Covenant by B. with A.*, that he, the sd B., will observe & pform the agrmts on the pt of the sd A. contained in the sd agrmt of, &c., *continue covts for the indemnity of A.*, p. 515, *mutatis mutandis*. [*Statemt as to value*, p. 525.]

Covenant by purchaser to indemnify vendor.

In witness, &c. (*d*).

L.

CONVEYANCE *of* Freeholds *to* Partners *on a* Sale *by* Auction *by* Order *of the* Chancery Division *in an* Administration Action (*e*). Variations *for a* Sale *by* Private Contract.

Parties, A. [& B.], *pson* [*or psons*] *havg legal este* [*or appted to convey*], 1 ; C. & D., *pchasers*, " carryg on business in co-

Parties.

(*b*) See L. P. Act 1925 s. 128 and *ante* p. 203, note.

(*c*) The power here inserted seems strictly unnecessary unless perhaps to enable the assignee to enforce the contract without making the assignor a party, which, unless he takes possession or attorns tenant, he cannot do : see *Tolhurst* v. *Associated Portland, &c., Ltd.*, (1903] A. C., at p. 420 : *Purchase* v. *Lichfield Brewery Co.*, [1915] 1 K. B. 184. See further as to powers of this nature, *ante*, p. 203.

(*d*) Notice of this assignment to be given to K.

(*e*) See L. P. Act 1925, s. 204 ; *Jones* v. *Barnett*, [1900] 1 Ch. 370 ; see also R. S. C. 1883, Order 51, rules 1, 1a *et seq.* As to the power of the Court to sell under statutory powers, see Dart, 7th ed., chap. 18, and as to sales by the Court generally, Williams, V. & P., 3rd ed., 448 *et seq.* ; Daniell's C. P., 7th ed., 872 *et seq.* ; Seton, 7th ed., chap. 19 ; and the Annual Practice, 1925, pp. 887 *et seq.* It need hardly be said that the form of the recitals depends upon the orders that are made in the action or other proceeding. For form of order approving conditional contract for sale, see Seton, 7th ed., 326 ; for sale in foreclosure action, *ib.* 1842 *et seq.* ; where the mortgage is equitable, *ib.* 1976 ; directing apportionment of purchase-money between mortgagees of different estates, *ib.* 1472.

ptnp togr as ——, under the firm name of ——, at ——," (*a*) 2. *Recite death & probate of the will of X.*, p. 458, f. **6**. AND WHAS by an order of the Chancery Division of the High Court of Justice made on the —— day of —— by Mr. Justice —— in an action, *re* X., deced, K. *v.* L., 19—, X., No. ——, for the administron of the este of the sd X. it was amongst other things ordered that the real este of the sd testor shd be sold, & that the pchase-moy shd be pd into Court to the credit of the sd action, the acct of ——, & that upon such paymt being made all pper pties (*b*) shd convey the sd este to the pchaser: *Recite sale pursuant to order by private contract or by auction as the case may be, and continue introductory recitals of payment into Court of deposit by person having conduct of sale, and of the balance by C. & D.*, p. 472, f. **8**, or p. 473, f. **9** (*c*). AND WHAS the sd C. & D. are desirous that the sd ppty shd be conveyed to them in mner hrinar appearg: NOW THIS DEED WITNESSETH as follows:

Recitals.
Action.
Order for sale.
Witnesseth.

1. IN OBEDIENCE to the sd order, & for effectuatg the sd sale, & in conson of the sum of £——, *the whole pchase-moy & intt, if any*, so pd by the sd C. & D., as afsd, & of the premes, the sd A. *or* "A. & B." **under the hrinbfe recited order of the Court**, &c. (*d*) hby grts *or* grt unto the sd C. & D., *Parcels*, p. 480: *Habendum to C. & D. as ptnp ppty*, p. 505, f. **21**.

(*a*) A conveyance to a firm under the firm name will pass the legal estate to the partners as joint tenants: *Maugham* v. *Sharpe*, 17 C. B. (N.S.) 443; *Wray* v. *Wray*, [1905] 2 Ch. 349; and see *ante*, p. 15, note (*b*).

(*b*) *I.e.*, the person or persons having the legal estate. Persons having equitable interests only who are parties to the action or have been served with notice of the judgment or order need not concur: *Re Williams*, 5 De G. & Sm. 515. The Court may appoint a person (in practice the Master) to execute a conveyance in place of a person who, though ordered, neglects or refuses to execute: see Judicature Act, 1925, s. 47; *Howarth* v. *Howarth*, 11 P. D. 95. As to vesting orders for carrying out a judgment for a sale, mortgage, exchange, or generally for a conveyance of land, see the T. Act, 1925, ss. 47–49; and for appointing a person to convey, see the T. Act, 1925, s. 50, and for vesting declarations and order for persons to convey, see Seton, 7th ed., 1191, *et seq.*

Payment into Court, how made.

(*c*) Payment into Court is usually made under a lodgment schedule, signed by the Master, and is effected by payment into the Bank of England pursuant to a direction issued by the Paymaster, S. C. F. R. 1915, rr. 29, 30 (Annual Practice, 1925, p. 1851), but it may be made under an order, and is often made in this manner if an order is required for any purpose after the purchaser has been ascertained.

(*d*) See *ante*, p. 533. In sales by trustees under the Court the persons beneficially interested cannot be required to enter into covenants for title: see *Cottrell* v. *Cottrell*, L. R. 2 Eq. 330.

2. PENDG THE sale of the whole of the ppty hby assured psuant to the trust for sale throf hrinbfe declared the sd C. & D. or other the trees for sale for the time being throf shl have power to mtge lease or orwise deal with the sd ppty or any pt throf for the pposes of the sd ptnership in such mner as the ptners for the time being shl from time to time determine.

3. [*Acknowmt* [*& undertakg*] *as to munimts*, p. 515.]

4. [*Statemt as to value*, p. 525.]

IN WITNESS, &c.

LI.

CONVEYANCE *of a* PLOT *of* BUILDING LAND NOT AFFECTED BY ANY BUILDING SCHEME (*e*) *with* EASEMENTS *to two* PERSONS *as* JOINT TENANTS (*f*). RESTRICTIVE AND OTHER COVENANTS *by the* PURCHASERS *as to* BUILDING *and* USER *of the* LAND. VARIATIONS WHERE A MOIETY *of the* ROADWAY *is included in the* CONVEYANCE *and for* LAND *in a* COMPULSORY DISTRICT.

Parties.

PARTIES, A. (hrinar called the vendor), 1; B. & C. (hrinar called the pchasers), 2. WHAS the vendor being the este owner in fee simple free from incumbces of the ppty coloured red & green on the plan hto, now known as the —— Este & comprisg the unsold pts of the —— Este recently offered for sale in lots by the [predecessor in title of the] vendor subjt to the stipulons contained in the —— schdle hto (*g*) under condons negativg the existence of any general scheme of bldg in respt throf, has agrd with the pchasers for the sale & transfer to them of the fee simple of the ppty hby assured subjt to the [reservons &] restrictions hrinar contained for the sum of £——.

(*e*) As to what constitutes a building scheme, see *ante*, p. 270, note (*b*). See also the note, *ante*, pp. 353 *et seq.*, and compare the next precedent.

Corporation holding in joint tenancy.

(*f*) Under the Bodies Corporate (Joint Tenancy) Act, 1899, a body corporate can, subject to the provisions of the Mortmain Acts, hold in joint tenancy.

(*g*) If the schedule of stipulations is framed exclusively in reference to the plot purchased say, "subjt to varying stipulons under conditions negativing, &c."

Witnesseth. *Recital as to form of conveyance*, p. 477, f. **29** ; NOW THIS DEED WITNESSETH as follows :—

Grant. **1.** In psuance of the sd agrmt & in conson, &c. (the receipt, &c.), & also in conson of the covts hrinar contained on the pt of the pchasers, the vendor as benefl owner hby grts unto the pchasers, *Parcels*, p. 480, wch premes being Lot —— of the —— Este are delineated & numbered —— on the plan hto & thrin coloured red, *with right to use of roads & drains*, p. 489 (*h*) ; [*Reservons of easemts, &c.*, pp. 492 *et seq.*, *& of power of re-entry restricted as to perpetuity*, p. 522, f. **17**] ;

Habendum, subject to contribution for maintaining roads, &c. (*i*). To hold the same premes (except & reserved as afsd) Unto the pchasers in fee simple. Subjt [to the obligon of contributg & payg a due proportion [accordg to the extent of their frontage towards the sd respective roads, or intended roads] of the expense of makg, maintaing, repairg & cleansg the sd roads, sewers & drains, until the same shl be adopted by & taken into the charge of the local authority, such proportion in case of dispute to be decided by the surveyor for the time being of the vendor, or his succors in title, & subjt] to the restrictions & condons in the —— schdle hto contained & imposed on the pchasers, as obligons intended to be bindg in perpetuity on the ppty hby assured, & all future owners throf as far as the law will permit (*k*).

Benefit of covenants of other purchasers. (*h*) The following, if so intended, may be added here, as to which see p. 359, note, and p. 489, form 33, and note :

"Togr with the benefit in common with the vendor & other psons entitled thereto of the covts restrictive of bldg upon & user of the several pts already sold [& constituting formerly lots —— to ——] of the sd —— Este contained in the assces to the respective pchasers throf specified in the —— schdle hto, & the right of enforcing the same in the name of the vendor."

(*i*) A road cannot become a highway repairable by the public unless the requirements of s. 23 of the Highway Act, 1835, have been complied with : *Cababé* v. *Walton-upon-Thames U. D. C.*, [1914] A. C. 102 ; and see *Reynolds* v. *Barnes*, [1909] 2 Ch. 361.

(*k*) The following is another form of clauses as to roads and sewers where the conveyance includes a moiety of the roadways.

Clauses as to roads and sewers. *Convce of plots numbered by reference to plan*, "includg a moiety of all streets or roads adjoing the sd respective plots of land so far as the same are co-extensive therewith, Togr with rights of foot, horse & carriage road at all times & for all pposes in common with the vendor, & his succors in title, over & along all streets & roads formed, made & opened to com-

Another form.

2. THE PCHASERS shl stand possessed of the ppty hby assured upon trust to sell the same & shl hold the net proceeds of any

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municate through, in, or upon any pt of the sd —— Este, when & so often as the same streets & roads are or shl be resply formed, made & opened for use, but not further or orwise. AND TOGR also with the free use (in common as afsd) of the drains or sewers made or intended to be made under the sd streets & roads resply, with power to open into & make communicons with the same resply, makg good all damage done thrby & restorg the surface of the sd streets & roads as soon as may be, RESERVG nevertheless to the sd A., & his succors in title, & his & their tenants, the like free & unrestricted rights of way & passage at all times & for all pposes (in common as afsd) over & along all the streets & roads afsd, And also the like use (in common as afsd) of the sd drains & sewers, with liberty to enter upon the sd streets or roads for the ppose of openg into or makg communicons with such drains or sewers, makg good all damage done thrby & restorg the surface so soon as may be, *Habendum to pchasers*, to the intent nevertheless that so much & such pt or pts resply of the sd plots of ground resply hby conveyed as are on the sd plan shown to be pts of streets or roads or intended streets or roads may reply for ever hrafter remain open & unbuilt upon & be added to & become pts of such streets or roads resply." *Covt by pchasers with vendor* "that they will leave open & unbuilt upon so much & such pt or pts of the sd plots hby conveyed as are delineated & described on the sd plan as portions of streets or roads & are intended to be set apart for such ppose, AND WILL when thrunto required by the District Council or other local authority at their own expse, pave, flag, make & form with pper materials & in a workmanlike mner the sd portions of such streets & roads resply so as to be fit for carriages, carts, & wagons, with pper causeways where necy [AND WILL make any alterons in the levels or gradients of the afsd portions of the sd streets or roads wch may be so required], AND ALSO will when required as afsd make & construct a sewer or drain under each of such portions of the sd streets or roads in accordce with such requiremts, AND WILL at all times cleanse, repair & maintain the sd portions of the sd streets or roads & the sewers thrunder until the same shl be taken over or adopted by the local authority."

such sale after paymt of costs & the net rents & profits until sale after paymt of all outgoings upon trust for the pchasers as tenants in common in equal shares.

3. PENDG THE sale of the whole of the ppty hby assured psuant to the trust for sale throf hrinbfe declared the pchasers or other the trees for sale for the time being throf shl have the same full & unrestricted power of mtging the sd ppty or any pt throf for any ppose & in any mner, & of leasg or orwise dealg thrwith in all respects as if they were absolute owners throf.

4. *Joint & several restrictive & other covts by B. & C. with A. as to bldg, &c.*, p. 521, f. **15**, *the formal part being framed as in* ff. **3** & **4**, pp. 712, 713, *so as in the case of restrictive covenants to be annexed to the land coloured green upon the plan* (*a*).

[**5.** *Absolute power of re-entry by A. on breach of covt to build*, p. 523, f. **18.**]

[**6.** *Registration of stipulations, if in compulsory district*, p. 524, f. **20.**]

[**7.** *Acknowmt & undertaking by A. as to muniments*, p. 515.]

[**8.** *Statement as to value*, p. 525.]

IN WITNESS, &c.

[*Schedules.*]

LII.

CONVEYANCE *of a* PLOT *of* BUILDING LAND FORMING PART *of a* BUILDING ESTATE OFFERED FOR SALE IN LOTS SUBJECT TO A GENERAL BUILDING SCHEME (*b*). VARIATIONS *for* LAND *in* COMPULSORY DISTRICT.

Recitals. *PARTIES*, A., (hrinar called the vendor), 1; B., (hrinar called the pchaser), 2. WHAS the vendor being the este owner in fee

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(*a*) A covenant or agreement restrictive of the user of freehold land entered into after 1925 should be registered under the Land Charges Act, 1925, see s. 10 (1) Class D.). If not so registered it will be void as against a purchaser of a legal estate for money or money's worth of land charged therewith: L. R. Act, 1925, s. 13 (2).

(*b*) See *ante*, p. 270.

simple free from incumbces, of the —— Este, consistg of land situate in the parish of —— & county of ——, containg in the whole about —— acres, as the same is distinguished on the plan hrunto annexed by pink & blue colours, wch plan is intended only to show the position of the lots & roads, & is not intended to be conclusive as to boundaries or dimensions (*c*), has recently offered the same for sale as a bldg este subjt to a general scheme applicable to the whole of the —— Este & to the stipulons contained in the first schdle hto, to the intent that the owner for the time being of any pt of the —— Este [remaining subjt to the sd bldg scheme (*d*)] might be able to enforce in equity the observce, by the owners for the time being of the other pts of the —— Este, [remaining subjt to the sd bldg scheme (*d*)] of such of the same stipulons as are negative (*e*), *Contract for sale*, p. 471, f. **2.** NOW THIS DEED WITNESSETH as follows :— Offer for sale as a building estate. Witnesseth.

1. In psuance of the sd agrmt & *conson* (the receipt, &c., pp. 478 *et seq.*) the vendor, as beneft owner, hby conveys to the pchaser All that piece of land distinguished on the sd plan by a blue colour & abuttg on a new road intended to be called Parcels.

(*c*) See *ante*, p. 260, note, and p. 483, note (*d*).

(*d*) Sometimes the vendor reserves power to withdraw from the scheme certain portions of the estate: see *ante*, p. 272.

(*e*) See *ante*, p. 270, note (*b*). The scheme itself is sufficient to support the negative stipulations as regards land comprised within the scheme, notwithstanding variations of those stipulations contained in the conveyance: *Knight* v. *Simmonds*, [1896] 1 Ch. 653, affirmed [1896] 2 Ch. 294; *Rowell* v. *Satchell*, [1903] 2 Ch. 212.

As to the effect of a lot sold subject to the stipulations of a scheme being afterwards split, see *King* v. *Dickeson*, 40 Ch. D. 596.

As to the extinguishment by the alteration of the character of the estate of covenants implied by or entered into in pursuance of a building scheme, see *Duke of Bedford* v. *Trustees of British Museum*, 2 Myl. & K. 552; *Peek* v. *Matthews*, L. R. 3 Eq. 515; *German* v. *Chapman*, 7 Ch. D. 271; *Sayers* v. *Collyer*, 24 Ch. D. 180; 28 Ch. D. 103; *Knight* v. *Simmonds*, [1896] 2 Ch. 294; *Craig* v. *Greer*, [1899] 1 Ir. R. 258; *Sobey* v. *Sainsbury*, [1913] 2 Ch. 513; *Pulleyne* v. *France*, 57 Sol. J. 173. A power of discharging or modifying restrictive covenants affecting land is given by the L. P. Act, 1925, s. 84, to "the authority," *i.e.* an official arbitrator appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919 (9 & 10 Geo. 5, c. 57), selected by the reference committee under that Act.

It is no bar to the enforcement of such covenants, that the person seeking to enforce them has himself committed a trivial breach: *Western* v. *MacDermott*, L. R. 2 Ch. 72; *Hooper* v. *Bromet*, 90 L. T. R. 234.

—— Road, containg on the north side frontg on the sd road — ft., on the east side — ft., on the south side — ft., on the west side — ft., being lot —— of the —— Este. EXCEPT ALWAYS & reservg to the vendor, in fee simple, the site of the —— Road: AND ALSO by way of convce and not of exception a right for the pchaser, & his succors in title, owners, & occupiers of the piece of land hby conveyed, in common with all other psons who have or may hrafter have the like right at all times & for all pposes, with or witht horses, carts, carriages, waggons, cycles or motors, laden or unladen, to go & return from & to the piece of land hby conveyed, along & over the intended new roads distinguished as —— Road & —— Road on the sd plan [AND ALSO the right of drainage from the piece of land hby conveyed into the sewer [now already or wch may at any time within twenty-one yrs from the date hrof be made] under —— Road, with power to break up the sd road for the pposes of makg & repairg pper connections with the sd sewer, he or they making good all damage to the sd road wch may be done in the exercise of this power (*f*)], with the benefit in common with the other psons entitled thto of any covt htofore [expressly or by reason of the sd scheme impliedly (*g*)] entered into by a pchaser of any pt of the —— Este with the vendor for the observce of the negative stipulons specified in the first schdle hto: To HOLD the same UNTO the pchaser in fee simple: SUBJT to the burden of the covts already [expressly or by reason of the sd scheme impliedly (*g*)] entered into by the vendor with the pchaser of any pt of the —— Este for the observce of the negative stipulons contd in the first schdle hto, so far as they ought to be observed by the owner or owners for the time being of the piece of land hby conveyed.

Habendum.

2. THE PCHASER to the intent & so as to bind (so far as practicable) the lands & premes hby assured into whosoever hands the same may come & to benefit & protect the residue of the —— Este hby covts with the vendor, to observe & pform [such of] the stipulons specified in the first schdle hto (*a*)

Covenants by purchaser.

(*f*) If the sewer has been taken over by the local authority, omit the words in this bracket.

(*g*) The words in this bracket may be required where the conveyance is of the first of several lots sold at the same time.

(*a*) As to the registration of restrictive covenants, see *ante*, p. 361, *note*.

[as are thrin provd to be observed or pformed by the pchaser of the piece of land hby conveyed]. [PROVD THAT the pchaser shl not be liable in damages for breach of this covt committed after he shl have ceased to have any intt in the piece of land hby conveyed (*b*).] Proviso limiting purchaser's liability.

3. THE VENDOR hby covts with the pchaser that the vendor, in respt of the pt of the —— Este retained by him, will observe such of the negative stipulons contained in the first schdle hto as are thrin provd to be observed by the sevl pchasers of the pts so retained & do not involve the expenditure of moy, but so that the vendor & his succors in title, shl not be liable in damages for the non-observance of the stipulons which ought to be observed by the owner for the time being of any pt of the —— Este after such pt shl have been conveyed to a pchaser subjt to this covt (*c*). [PROVD always that the covts by the vendor hrinbfe contained shl not prevent or affect the exercise of the powers hrinar contained.] Covenants by vendor.

[**4.** THE VENDOR or his succors in title other than any pson derivg title under a convce in wch the power hby reserved shl not be expressly assned, may at any time or times hrafter sell, transfer or orwise deal with all or any of the lots marked " reserved " on the sd plan (*d*) free from the stipulons contained Reservation of power to withdraw part of the property

(*b*) Where the value of the lots is small, so that they are likely to be purchased by persons whose covenants are not of much value, there is not any serious objection to inserting the words in this bracket. It must, however, be remembered that if they are inserted the vendor will have no remedy in case of a breach of the positive stipulations after a sale by the purchaser. It will, therefore, be proper in this case to reserve a power of re-entry on breach of covenant (see *ante*, p. 522, f. 17), unless the stipulations contain the penalty for breach of stipulations, p. 275.

(*c*) The stipulations often contain, in addition to restrictions, provisions involving the expenditure of money by the respective purchasers, as, for instance, to erect buildings, to erect and maintain fences, &c.: see *ante*, pp. 361 *et seq.* The vendor does not usually bind himself to provisions of this kind; but if, in regard to some minor matters, as, for instance, the making and maintenance of roads fronting the unsold lots, this is intended, and there is inserted in the stipulations a provision that as regards such matters the vendor shall stand in the place of the purchaser of the unsold lots, the following further covenant by the vendor operating to give effect to the provision should here be inserted: " And also will perform & observe such of the stipulons contained in the first schdle hto as ought to be performed & observed by the vendor."

(*d*) If the power reserved by the conditions (see *ante*, p. 272, f. 7) extends to the unsold lots, these should be distinguished on the plan to this conveyance by a separate colour, and the above power will be made to extend to the lots so distinguished.

from the scheme (*e*).

in the first schdle hto in such lots & subjt to such restrictions & stipulons (if any) as he or they may think fit.]

Covenants to operate as grants and reservations.

5. The covts hrinbfe contd shl, so far as may be necy for the ppose of conferrg any rights or intts on the pchaser, & his succors in title, operate as grts by the vendor, & shl so far as may be necy for the ppose of reservg or conferrg any rights or intts to or on the vendor, & his succors in title, operate as reservons or exceptions.

[**6.** *For land in a compulsory district add, Provisions as to registron subjt to restrictions*, p. 524.]

7. *Acknowmt & undertakg as to documts in second schdle*, p. 515.

[**8.** *Statement as to value*, p. 525.]

In witness, &c. (*f*).

Schedules of stipulations & documents.

LIII.

CONVEYANCE *on* Sale *of the* Residue *of a* Building Estate *after* Several Lots *have been sold* (*a*).

Recitals

Parties, A., *vendor*, 1; B., *purchaser*, 2. Whas immedly bfe the first of the sales & convces hrinar mentd the sd A. was the este owner in fee simple free from incumbces of the —— Este, hrinar described: And whas the sd A. has from time to time sold pts of the —— Este, being the lots distinguished on the plan hto annexed by the numbers in the first column of the first schdle hto, & has conveyed the same with certain easemts & rights over the roads shown on the sd plan to the sevl pchasers whose names are stated in the second column of

(*e*) It is assumed that the conditions of sale are framed as in Prec. IV., *ante*, pp. 270 *et seq.*, that is to say that the whole estate is made subject to the building scheme with power to the vendor and his assigns expressly authorised by him to withdraw certain parts of the estate from the scheme. It is generally desirable that a purchaser of the residue of the estate in the block after several lots have been sold, should be in a position to exercise the power: see next Precedent.

(*f*) As to the right of the purchaser to have a memorandum giving notice of his rights over the rest of the property, endorsed on or annexed to a common title deed retained by the vendor, see *ante*, p. 274, note (*c*).

(*a*) It is assumed that the conditions of sale and the conveyances of the lots already sold were in the forms, *ante*, p. 270; and p. 625.

the sd schdle by sevl deeds of conveyance to each of wch this deed is suppl & the dates of wch are specified in the third column of the sd schdle, & wch are hrinar referred to as the ppal deeds: AND WHAS each of the ppal deeds [except the convces of the plots marked reserved on the sd plan] contained covts by the pchaser thrin named & by the vendor, & other provons as to the pformance & observce of the stipulons contained in the second schdle thrto, a copy of wch is the second schdle hto: AND WHAS the sd A. has agrd with the sd B. for the sale & transfer to him of the fee simple of the unsold pts of the —— Este except as hrin is excepted with the benefits, rights & powers hby conveyed, subjt as is hrinar mentd, but free from all other incumbces: NOW THIS DEED WITNESSETH that in psuance, &c., *conson & receipt*, pp. 478 *et seq.*, the sd A. as **benefl owner** hby grts unto the sd B. ALL those pieces or pcels of land situate in the parish of —— in the county of —— known as the —— Este, as the same is, with the boundaries & abuttals throf, delineated on the plan hto annexed, & is thron surrounded with a red line. EXCEPT such pts throf as are distinguished on the sd plan by the numbers in the first column in the first schdle hto: EXCEPT ALSO such pts of the surface & subsoil throf as by virtue of any statute or order havg statutory authority have become vested in any municipal or local authority: TOGR by way of convce & not of exception with the benefit of the covts by the respective pchasers in the several ppal deeds contained (so far as the same are now capable of being assigned (*b*)): AND ALSO the right to exercise the powers & all other rights by either of the ppal deeds or by the stipulons contained in any of the ppal deeds reserved to or conferred on the sd A. & his succors in title (*c*): TO HOLD the same UNTO THE SD B. in fee simple, subjt to the easemts grted by any of the ppal deeds, subjt also to all rights & easemts wch by virtue of any statute or order havg statutory authority are now existing over the pieces or pcels of land hby conveyed & are vested in any municipal or local authority, subjt also to the pformance & observce of the stipulons contained in the second schdle hto, so far as the same ought to be pformed or observed by the owner of the pieces

Witnesseth.

Habendum.

(*b*) The words in this bracket should be inserted if the liability of the purchasers on their covenants is restricted to the period of ownership.

(*c*) See *ante*, p. 627.

or pcels of land hby conveyed & to the burden of the covts by the sd A. contained in either of the ppal deeds : AND the sd B. hby covts with the sd A. that he, the sd B., will henceforth pform & observe the covts by the sd A. contained in any of the ppal deeds : AND WILL at all times keep the sd A., & his succors in title, effectually indemnified against all actions, proceedings, costs, damages, expses, claims & demands whatsr by reason or on acct of the breach, non-pformce or non-observce of the sd covts or any of them or of the stipulons contained in either of the ppal indres. IN WITNESS, &c.

Covenants by purchaser.

The Schedules.

LIV.

DEED *of* COVENANT *between* VENDORS *and* PURCHASERS *of* LAND *laid out in* BUILDING PLOTS (*d*).

Parties. A DEED made the —— day of ——, betn the sevl psons who have signed their names & affixed their seals to these psnts whose names are specified in the second column of the first schdle hto (other than the pties hto of the second pt) hrinar called the pchasers of the one pt, & A. of, &c., & B. of, &c. (hrinar called the vendors) of the other pt : WHAS the este wch is delineated on the plan hrupon endorsed, & wch is situated at —— in the Parish of —— in the county of ——, was by a conveyce, &c., assured to [the use of] the vendors, in fee simple ; AND WHAS the vendors have appropriated or laid out under a bldg scheme divers pts of the sd este wch are hrinar designated as " The Lots," & are distinguished on the sd plan

Recitals.

Conveyance to vendors.

Estate laid out under scheme.

(*d*) As to the establishment by deed of covenant of a building scheme binding on the vendors, see *Mackenzie* v. *Childers*, 43 Ch. D. 265. As to the effect of a reference in a conveyance to a purchaser to a deed of covenant which is not executed, see *Elliston* v. *Reacher*, [1908] 2 Ch. 665 : see also *ante*, p. 270, note (*b*). Notice of the deed should be endorsed on the conveyance to A. and B., and also on a common title deed retained by the vendor : see *ante*, p. 274, note (*c*).

As to laying out part of a settled estate for building purposes, see S. L. Act, 1915, s. 56.

by the numbers from 1 to —— inclusive, & by the colours pink & blue, & have appropriated or laid out as roads other pts of the sd este distinguished on the sd plan by the colours yellow & brown & their distinctive names & have dedicated to the public the roads coloured yellow on the sd plan (*a*), & intend to dedicate to the public the roads coloured brown on the sd plan as soon as the pper Local Authority shl be willing to adopt the same : AND WHAS each of the pchasers has recently pchased from the vendors one or more lots, & the vendors have made or are about to make pper convces of the same to the respective pchasers throf in fee simple ; AND WHAS the parlar lot or lots so pchased as afsd by each of the sd pchasers will appear by reference to the number or numbers entered opposite to his name in the first schdle hto, all the numbers so entered correspondg with those by wch the lots are distinguished as afsd on the plan ; AND WHAS, upon the contracts for the sd sevl pchases hrinbfe referred to being entered into, it was agrd that each of the sd pchasers, & his succors in title, shd observe & pform & have the benefit of such of the stipulons contained in the second schdle hto, as are applicable to the lot or lots pchased by him as afsd, [& that the vendors, & his succors in title, shd observe such of the sd stipulons as do not involve the expenditure of moy & are applicable to the unsold lots, & shd have the benefit of such of the stipulons contained in the second schdle hto as are applicable to the unsold lots] [& the roads coloured brown on the sd plan], & that for effectuatg such agrmt these psnts shd be executed : NOW THIS DEED WITNESSETH that in conson of the premes each of the pchasers, hby covts with the other pchasers, & also separately with the vendors, THAT he the sd covtor, & all psons derivg title through, under, or in trust for him, as lessees, mtgees, or orwise howsr, shl & will at all times hrafter observe & pform such of the stipulons contained in the second schdle hto as are applicable to the lot or lots pchased by him ; AND the vendors hby jointly & sevlly covt with the pchasers that the vendors & their succors in title will observe such of the sd stipulons as do not involve the expenditure of moy & are applicable to the unsold lots [& the

Purchase of lots.

How each purchaser's lot is distinguished in schedule.

The sales made subject to stipulations.

Witnesseth.

Covenants by purchasers with each other and the vendor to perform stipulations in schedule.

Covenant by

(*a*) See *Cababé* v. *Walton-upon-Thames U. D. C.*, [1914] A. C. 102, and *ante*, p. 622, note (*i*).

vendors to perform stipulations.

Definition of terms in schedule.

roads coloured brown on the sd plan] (*b*), & further that every subseqt pchaser of an unsold lot shl execute this deed as a party thrto of the second pt ; And it is hby mutually agrd & declared betn & by the sevl psons pties hto that, in the construction & for the pposes of this deed & of the second schdle hto, the followg terms or expressions shl have or bear the sevl meangs next mentd that is to say :—" the vendors " shl mean & include the sd A. & B., & their succors in title ; " the surveyor " shl mean & include the surveyor for the time being of or employed by " the vendors " ; " licence " shl mean a licence in writg by & under the hands of " the vendors " or their duly authorised agent ; " the plan " shl mean the sd plan hrupon endorsed ; " the lots " shl mean the portion of the sd este appropriated or laid out as afsd for bldg pposes ; the " unsold lots " shl mean the lots not sold to the respt pchasers ; and " a lot " or " the lot " shl mean one of the " lots " ; & " the private roads " shl mean the roads coloured brown on the plan ; " the public roads " shl mean the roads coloured yellow on the plan ; a " private road " or a " public road " shl mean one of the " private roads " or " public roads " resply ; & " owner " with reference to any lot or lots, shl mean & include the pson to whom the same lot or lots has or have been or is or are about to be conveyed as afsd, & his succors in title : Provd always & it is hby agrd that the vendors or the owner of any lot may at any time enforce the observce or pformce of any of the sd stipulons by any action or proceeding against any other or others of them witht makg any pson a defendant thrto other than the pson committg or sufferg the breach of such stipulons wch is complained of in such action or proceeding & that this deed may be reced as a conclusive answer to any objection for want of pties in that respt in any such action or proceeding : [*For land in a compulsory district add Provision as to registration subject to restrictions*, p. 524, *mutatis mutandis*.] In witness whrof the sevl psons pties hto of the first pt, have attached & affixed their respective signatures & seals to these psnts, on the days hrinbfe mentd bfe & against their signatures resply, & the sd A. & B. have hrunto attached & affixed their respective signatures & seals the day & yr first above written.

Proviso that any one person may sue any other.

Testimonium.

(*b*) As to the framing of these covenants, see *ante*, pp. 354, 355, note.

The First Schdle hrinbfe referred to.

No. of Lot.	Purchaser's Name.	Date of Execution by Purchaser.	Purchaser's Signature and Seal.	Witness.

The Second Schdle hrinbfe referred to.
(*Stipulons, see* pp. 361 *et seq.*)

LV.

CONVEYANCE *in* FEE *for* BUILDING PURPOSES *in consideration of a* PERPETUAL RENT-CHARGE (*a*), *with the* BENEFIT *of* COVENANTS *and a* POWER OF DISTRESS *over* ADJOINING LAND, *existing as an* INDEMNITY *against a prior overriding* RENT-CHARGE. VARIATIONS *where the* PRIOR RENT-CHARGE *is to be borne by the* PURCHASER, *and where the* VENDOR *retains some of the* LAND *subject to the* PRIOR RENT-CHARGE. PROVISIONS *as to* REDEMPTION *of* RENT-CHARGE (*b*).

Parties, A., *vendor*, 1; B., *pchaser*, 2; *Recite convce to A.*, " of the land hby grted togr with other land " *subjt to a perpetual rent-chge of* £40 *& to certain covts; Convce by A. to X. of part of the land subjt to the rent-chge & charging the whole rent-chge on that part in exoneron of the land retained by A. & containg covts by X. & a power of distress, & other provons for indemnifyg A. & the land retained* (*c*); *Contract for sale for rent-chge of* £30, p. 471, f. **1**, *note*. NOW THIS DEED WITNESSETH Recitals. Witnesseth.

(*a*) As to sales in consideration of a rent-charge and the power of re-entry, see *ante*, p. 376, note (*f*).

(*b*) As to the stamp on a conveyance in consideration of a rent-charge, see Stamp Act, 1891, s. 56 (2). Fin. (1909–10) Act, 1910, s. 73. This deed is not affected by the Lands Charges Act, 1925, s. 10, which relates to land charges created otherwise than by deed only: cf. *R.* v. *Land Registry*, 24 Q. B. D. 178.

(*c*) It is assumed that the recited conveyance was made before 1926, and, accordingly, that the L. P. Act, 1925, s. 190, does not apply.

that in psuance, &c., & in conson of the yrly rent-charge hrinafter reserved to the sd A., & of the covts by the sd B. hrinar contained, the sd A., as **benefl owner**, hby grts unto the sd B.,

Grant.

Parcels, p. 480 : TOGR WITH the full benefit of all the covts by the sd X. & powers & remedies in the sd convce of, &c., contained or orwise existg for securg the paymt by the sd X., & his succors in title, & indemnifyg the sd A., & his succors in title, & the land hby grted against the paymt of the sd yrly rent-chge of £40 by the same deed charged exclusively on the land thrby assured to the sd X. (*a*), TO HOLD the same UNTO the sd B. in fee simple, SUBJT & RESERVG to the sd A. in fee simple a perpetual yrly rent-charge of £30 to commence from the date of these psnts & to be charged upon & issuing out of all the premes hby grted & to be pd witht any deduction (*b*) by eql half-yrly paymts on the —— day of ——, & the —— day of —— in every yr, the first paymt throf to be made on the —— day of —— next (*c*), And subjt & reservg to the sd A. & his succors in title, &c., *continue power of re-entry for A., on breach of any covenant involving the expenditure of money* [*other than the covenant to erect buildings*] p. 522, f. **17**, *omitting the words in brackets restricting the right as regards perpetuity* (*d*) ; AND THE

Together with benefit of covenants.

Habendum.

Limitation of rent-charge.

Variations where A. retains some of the land.

(*a*) If A. retains any of the land, the grant of indemnity covenants should be of the benefit of such covenants "in common with the sd A. & his succors in title." The reference to "the land hby grted" should be to "the exonerated land" and the grant should conclude with the words "& so that this grt shl be subjt & witht prejudice to the rights of the sd A., &c., to enforce & exercise to the fullest extent such covts, powers, & remedies."

(*b*) As to these words, see *ante*, p. 376, note (*e*).

Statutory remedies for recovering rent-charge.

(*c*) As to an action of debt for non-payment of a rent-charge, see *ante*, pp. 69, 70, note. The L. P. Act, 1925, s. 121, gives to the owner of any annual sum charged on land or the income of land, not being rent incident to a reversion, the following remedies for recovering the same and the costs arising from non-payment, so far as they might have been conferred by the instrument creating the charge, but subject to the interests having priority over the charge, namely, if the charge is in arrear for twenty-one days, a power of distress, if the charge is in arrear for forty days a power to enter and take the rents and profits, and also whether he enters and takes possession or not, a power to limit a term of years to a trustee, with or without impeachment of waste, upon trusts for raising the charge and costs. Powers of distress and re-entry may, therefore, be omitted. As to the power of a tenant for life to sell in consideration wholly or partially of a perpetual rent or a terminable rent consisting of principal and interest combined. See S. L. Act, 1925, s. 39, and *ante*, p. 599, Prec. XXXIX.

(*d*) The rule against perpetuities has no application either to the statutory

sd B. hby covts with the sd A. that he, the sd B., will henceforth pay to the sd A. the sd yrly rent-charge of £30 at the times & in the mner hrinbfe appted for the paymt throf, free from all deductions (*e*): AND FURTHER, &c., *for* [*erectg &*] *maintaing bldgs, &c., & restrictive covts*, see p. 521: And will permit the sd A., & his succors in title, & his or their agents, once in every yr in the daytime, on givg to the tenant or occupier for the time being of any dwellg-house or bldg upon the premes hby grted, —— days previous notice in writg to enter into & upon the same to view the state of repair & condon throf: [*Absolute power of re-entry on breach of covenant to erect buildings within limited time*, p. 523, f. **18**]: [PROVD ALWAYS & it is hby agrd & declared that if the sd B., or his succors in title, shl at any time give six calr months' notice in writg to the sd A., or his succors in title, of his or their desire of pchasg the sd rent-charge, the sd A., & his succors in title, shl after the expiron of the sd notice on paymt by the sd B., or his succors in title, of such rent-charge up to the day of pchasg the same, & of the sum of £——, convey & release the same rent-charge to the sd B., or his succors in title, or as he or they shl direct; PROVD also that if the sd A., or his succors in title, shl at any time, give six calr months' notice in writg to the sd B., or his succors in title, of his or their desire of

Covenant to pay rent-charge.

Power to purchaser to redeem rent-charge.

Power to vendor to compel redemption (*a*).

remedies for enforcing a rent-charge: L. P. Act, 1925, s. 121 (6); or to the same or the like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of that section. See *ante*, p. 376, note (*f*). Nor does the rule apply to a right of re-entry annexed to a legal rent-charge: L. P. Act, 1925, s. 4 (3), and *ante*, p. 378, note (*b*).

(*e*) If the land is sold subject to the prior rent-charge instead of being exonerated from it, the recital of the contract for sale and the habendum would be, "subjt to the sd rent-charge of £—— reserved by the hrinbfe recited convce of, &c.," The necessary covenants on the part of the purchaser to pay and keep the purchaser indemnified against such rent-charge, and powers of distress and entry in case of non-payment would in that case be implied: see L. P. Act, 1925, ss. 77 and 190, and *ante*, pp. 379 *et seq.* If in the same case the vendor retains any part of the land subject to the rent-charge, the rent-charge may be expressed to be apportioned and the proper covenants on the part of the vendor and purchaser respectively (L. P. Act, 1925, s. 77) with the usual cross rights of distress and entry (s. 190) will be implied: see *ante*, p. 379.

Sale subject to prior rent-charge.

(*a*) The L. P. Act, 1925, s. 191, enables the owner of land, subject to a perpetual rent or other annual sum including a rent reserved on a sale to redeem it with the aid of the Minister of Agriculture and Fisheries who will certify the amount of money to be paid for redemption. This clause fixes the amount without the aid of the Minister.

requirg the redmon of the sd rent-charge by the sd B., or his succors in title, then the sd B., or his succors in title, shl upon the expiron of the sd notice redeem the same for the sum of £—— wch shl be thrupon pd by him or them to the sd A., or his succors in title, togr with the sd rent-charge up to the day of redmon, & upon such paymt being made the sd A., or his succors in title, shl convey & release the sd rent-charge to the sd B., or his succors in title, or as he or they shl direct]. [*Registron of restrictive condons*, p. 524.] IN WITNESS, &c. (*b*).

[*Schedule of Stipulations.*]

LVI.

CONVEYANCE *of several* PERPETUAL RENT-CHARGES (SUBJECT *as to one to a* PRIOR RENT-CHARGE) *and of a* PLOT *of* GROUND *let on a* BUILDING LEASE. CONCISE FORM *without* RECITALS. VARIATION *where* ONE *of the* RENT-CHARGES *is* SUBJECT *to a* RENT-CHARGE CHARGED *thereon* (*c*).

Witnesseth.

PARTIES, A., *vendor*, 1 ; B., *pchaser*, 2. WITNESSETH, &c., *conson*, " for the pchase, subjt as hrinar appears, of the fee simple of the yrly rent-charges & plot of land hby grted," (the receipt, &c.), the sd A., as benefl owner, hby grts unto

Conveyance of rent-charges.

the sd B., ALL THOSE sevl perpetual yrly rent-charges, amtg togr to the sum of £——, of wch resply, & of the respective lands & ppty out of wch the same resply issue, the parlars are stated in the first pt of the schdle hto, & wch lands are resply delineated on the plan hto annexed, & are in such plan resply edged red, & each of wch is marked with the amt of the rent-charge to wch the same is subjt, AND ALL future paymts of the sd respective rent-charges, AND ALL powers & remedies for recovery of the sd rent-charges & the benefit of all covts, condons, & provons contained in the respective deeds mentd in the first pt of the sd schdle hto, by wch the sd

(*b*) The usual statement should be inserted when the rent-charge reserved does not exceed £25.

(*c*) See L. P. Act, 1925, s. 122, which enables a rent-charge to be granted, reserved, charged or created out of or on another rent-charge itself charged on or payable out of land ; and, without prejudice to any order of Court made before 1926, operates to confirm any such rent-charge so created before that date.

rent-charges were resply created (*d*) : AND ALSO all that plot of freehd land, situate, &c., also delineated on the sd plan, & thron edged blue, & wch is let on lease for a term of yrs & at the yrly rent, the parlars whrof are stated in the second pt of the sd schdle hto : TO HOLD all the premes, hby grted UNTO the sd B., in fee simple, SUBJT as to the rent-charge of £—— mentd in the schdle hto to the paymt thereout henceforth of the yrly sum of £10 (*e*), being a proportionate but unapportioned pt of a yrly rent-charge of £25 wch by a deed, &c., was made issuing & payable out of a plot of land includg the sd land out of wch the sd rent-charge of £—— issues, BUT WITH THE BENEFIT of all powers, remedies & covts existg as an indemnity against paymt of an undue proportion of the sd rent-charge of £25, or of any expses or damages on acct throf, AND SUBJT as to the sd plot of land hby grted to the residue now unexpired of the term of yrs grted by the sd lease (if & so far as the same is now subsistg) mentd in the second pt of the schdle hto. IN WITNESS, &c (*f*).

And land.

Habendum.

Subject to overriding rent-charge.

And to building lease.

The Schdle above referred to.

Part 1.

Amounts of Rent-charges.	Dates of Deeds by which the Rent-charges were created.	Contents and Situation of Lands out of which the Rent-charges issue.	To whom the Rent-charges were made Payable.	To whom the Lands were limited.	Days on which the Rent-charges were made Payable.

Part 2.

[*Parlars of plot of bldg land.*]

(*d*) For another description of parcels, see *ante*, p. 486.

(*e*) For the case of a rent-charge created out of the rent-charge conveyed, say, "which by a deed dated, &c., was charged on & made issuing & payable out of the sd rent-charge of £——."

(*f*) Notice should be given to the persons by whom the rent-charges are payable. As a rent-charge is "land" within the meaning of the L. P. Act, 1925, see ss. 201 (1) and 205 (1) (ix), covenants on the part of purchaser for payment and indemnity against non-payment of the yearly sum of £10 whether in the case supposed in the text or in the preceding note, will be implied.

LVII.

CONVEYANCE *of an* ADVOWSON (*a*). VARIATIONS *where the* VENDOR *is* TENANT *for* LIFE *and sells the* PRESENTATIONS *which happen during his* LIFE-TIME (*b*), *or for the* CONVEYANCE *of a* NEXT PRESENTATION *only.*

Recitals. Title of vendors.

Parties, A., *vendor*, 1; B., *pchaser*, 2. Whas the sd A. is the este owner in fee simple of the advowson & perpetual right

(*a*) Neither estate duty nor succession duty is payable upon the value of an advowson: *Att.-Gen.* v. *Peek*, [1913] 2 K. B. 487.

(*b*) As to the old law of sales of advowsons and next presentations, see 2 Dav. Prec., 4th ed., pt. 1, pp. 30, 37; Williams, V. & P., 3rd ed., 421; and the Incumbents' Resignation Acts, 1871 & 1887, 2 Dav. Prec., 4th ed., pt. 1, p. 356; and as to the law of Simony, see Phillimore on Ecclesiastical Law; and see also the report of the Royal Commission on Ecclesiastical Benefices of 1880, and the evidence appended. As to advowsons belonging to municipal corporations, see Municipal Corporations Act, 1882, ss. 121, 122.

Benefices Act, 1898.

The Benefices Act, 1898, provides that a transfer of a right of patronage of a benefice shall not be valid unless (*a*) it is registered in the prescribed manner in the registry of the diocese within one month from the date of transfer or within such extended time as under special circumstances the bishop may think fit to allow; (*b*) it transfers the whole interest of the transferor in the right except where in a family settlement a life interest to the settlor or in a mortgage the right of redemption is reserved; (*c*) more than twelve months have elapsed since the last institution or admission to the benefice. It also provides that a right of patronage may not be put up for sale by auction, save in the case of an advowson to be sold in conjunction with a manor or with an estate in land of not less than one hundred acres situate in the parish in which the advowson is situate or in an adjoining parish and belonging to the same owner as the advowson. All agreements to exercise a right of patronage in favour or on the nomination of a particular person, or for the re-transfer of the right of presentation, or for postponing payment of any part of the consideration for the transfer until a vacancy or for more than three months, or for payment of interest until a vacancy or for more than three months or for any payment in respect of the date at which the vacancy occurs or for the resignation of a benefice in favour of any person are rendered invalid. "Transfer" is not to include a transmission on marriage, death, or bankruptcy, or otherwise by operation of law, nor a transfer on the appointment of a new trustee where no beneficial interest passes: see Dart, 7th ed., 271.

The practical result appears to be to prohibit the sale of a next presentation, except in cases where that is the only interest in the right of presentation vested in the vendor. Probably though a tenant for life of a settled advowson can sell the fee under the S. L. Act, he can sell such presentations as fall vacant during his lifetime.

The right to sell advowsons has been further restricted by the Benefices Act, 1898 (Amendment) Measure, 1923 (14 & 15 Geo. 5, No. 1), which by s. 1 makes rights of patronage of a benefice incapable of sale after two

of presenton of & to the rectory & Parish Church of ——, in the County of —— (*c*); [WHAS the sd A. is entitled to the next presentation to the rectory & Parish Church of, &c.;] AND WHAS more than twelve months have elapsed since the last institution or admission to the sd rectory; AND WHAS the sd A. has agrd with the sd B. for the sale to him of the sd advowson, or perpetual right of presentation [such turns or rights of presentation "as shl become vacant durg the life of the sd A."] [of the next presentation to the sd rectory & Parish

Agreement for sale.

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vacancies of such benefice subsequent to the passing of this measure (July 14, 1924). By s. 2 patronage rights may be made incapable of sale by a patron entitled for his own benefit in fee simple or fee tail by declaration under seal registered in the registry of the diocese.

The L. P. Act, 1925, does not affect the special restrictions imposed on dealings with advowsons by the above-mentioned Act and Measure: s. 201 (2).

Care must be taken in framing conditions of sale by auction of an advowson to include it in the same lot as a manor, or with at least one hundred acres of land, situate in the same parish as the benefice or in an adjoining parish. It should be noticed that "manor" is not defined so as to include a "reputed manor" or a "seignory," but probably it will be held that the word "manor" is to bear its popular meaning and includes the former but not the latter. A next presentation cannot be sold by auction.

Care must be taken not to execute a settlement which includes an advowson till the expiration of at least twelve months since the last institution or admission to the benefice.

The title to an advowson must be carried back for at least one hundred years and must shew the presentations during that period (Dart, 7th ed., 329), the title after 1898 must also shew the dates of the institutions or admissions. As to the meaning of "institution" and "admission," see Co. Litt. 344 (a).

A list of institutions is kept by the Bishop's Secretary in a book which in some Dioceses is called "The Act Book."

As to the effect of the union of two benefices, see *Lord Elcho* v. *Andrews*, [1910] 1 Ch. 706.

For the rules under the Benefices Act, 1898, see [1899] W. N., pt. 2, pp. 1, 79, 91; 43 Sol. J. 150, 352, 721, and the Current Index for 1899, lxix., lxxiii.; and for notices as to fees, see [1899] W. N. pt. 2, p. 260; and the Current Index for 1899, lxxxvii.

An advowson being an incorporeal hereditament is land within the meaning of the Land Registration Act, 1925, and may be registered: L. R. Act, 1925, s. 3 (viii), Rule 50, but is excepted from compulsory registration; L. R. Act, 1925, s. 120 (1).

(*c*) Where the sale is by a tenant for life of the presentations happening during his lifetime substitute "WHAS under or by virtue of a settlemt [trust instrument] dated, &c., & made, &c., the sd A. is entitled durg his life to the right of presentation to the rectory, &c."

Witnesseth. Church] for the sum of £——; NOW THIS DEED WITNESSETH, *conson*, (the receipt, &c.) the sd A., **as benefl owner**,

Grant. hby grts unto the sd B., *Parcels, advowson, see* p. 486; [All those the rights of presentation to the sd rectory & Parish Church wch durg the life of the sd A. shl happen after the date of these psnts]; *for next presentation, see* p. 487, f. **25**:

Habendum. *Habendum, for advowson,* "UNTO the sd B., in fee simple," *in other cases,* "UNTO the sd B. absolutely." IN WITNESS, &c.

LVIII.

SUBSIDIARY VESTING DEED *on* PURCHASE *by* TENANT *for* LIFE *or* STATUTORY OWNER *from a* RAILWAY COMPANY *of* SUPERFLUOUS LAND NOT *in a* TOWN (*a*).

PARTIES, The —— Rly Co (hrinar called the Co), 1; B. & C.,

Recitals. *trees* (hrinar called the trees), 2; A., *tenant for life* (hrinar

Sale of superfluous land by railway companies.

(*a*) See Lands C. C. Act, 1845, ss. 127 *et seq.* If the sale is of land not in a town, and not to an adjoining owner, the recital will be that notice has been given to all the adjoining landowners in succession offering to sell to them, and that they have all declined. As to what is superfluous land, see *Beauchamp* v. *G. W. Rly. Co.*, L. R. 3 Ch. 745; *Hobbs* v. *M. Rly. Co.*, 20 Ch. D. 418; *G. W. Rly. Co.* v. *May*, L. R. 7 H. L. 283; *L. & S. W. Rly. Co.* v. *Gomm*, 20 Ch. D. 562; *Hooper* v. *Bourne*, 5 App. Cas. 1; *Re Thackwray & Young*, 40 Ch. D. 34; *Macfie* v. *Callander & Oban Rly. Co.*, [1898] A. C. 270; *Re Lancashire & Yorkshire Rly. Co.*, 100 L. T. 44; and as to what is "land in a town," see *Carington* v. *Wycombe Rly. Co.*, L. R. 3 Ch. 377; *L. & S. W. Rly. Co.* v. *Blackmore*, L. R. 4 H. L. 610. See also on both points, *Dunhill* v. *N.-E. Rly. Co.*, [1896] 1 Ch. 121. Land over a tunnel: *Metropolitan District Rly. Co. & Cosh*, 13 Ch. D. 607; or under an arch: *Mulliner* v. *M. Rly. Co.*, 11 Ch. D. 611; is not "superfluous," and therefore cannot, in the absence of a special power, be sold by the Company, but they may lose the right to the surface of land over a tunnel by adverse possession: *M. Rly. Co.* v. *Wright*, [1901] 1 Ch. 738. The Company usually stipulate that their title shall be accepted without investigation, and that they shall not be bound to produce or covenant to produce any muniments of title. Although the Company takes free from restrictive covenants they revive on the re-sale of the land as superfluous land: *Bird* v. *Eggleton*, 29 Ch. D. 1012; *Metropolitan Water Board* v. *Solomon*, [1908] 2 Ch. 214. The sale must by s. 127 be without reservation: *Re Thackwray & Young*, 40 Ch. D. 34; and a covenant by the purchaser to re-sell the land to the Company if required vitiates the sale: *L. & S. W. Rly. Co.* v. *Gomm, sup.*; but if the covenant relates only to a part of the land, only as to that part

called the pchaser), 3. WHAS the Co are the este owners in fee simple free from incumbces of the piece of land hby conveyed, wch is superfluous land of the Co, not required for the ppses of their undertakg, & the same adjoins land wch forms pt of the —— settled estes : AND WHAS by a ppal vestg deed (hrinar called the ppal deed), dated, &c., & made, &c., the sd settled estes were vested in the pchaser upon the trusts of a settlemt dated, &c., and made, &c., & by [endorsemt on] the ppal deed the trees were stated to be the trees of the settlemt for the ppses of the S. L. Act, 1925 : AND WHAS the Co have, by a notice in writg under the hand of their secretary, offered to sell the sd piece of land to ——, the vendor throf to the Co, but he has declined to pchase the same : AND WHAS the Co as such este owners as afsd have agreed with the pchaser for the sale & transfer to him of the fee simple of the sd piece of land free from incumbces for the sum of £—— : NOW THIS DEED WITNESSETH as follows :—

Company seised of superfluous land.

Notice to sell to vendor.

His refusal to buy.

Agreement for purchase trustees.

1. IN CONSON of the sum of £——, pd by the trees by the direction of the pchaser to the Co (the receipt, &c.), the Co, by the direction of the pchaser, hby grt (*b*) unto the pchaser, *Parcels referrg to plan*, p. 483, the numbers on wch refer to the correspondg numbers on the Parliamentary deposited plans & book of reference thereto of the Co relative to land in the sd parish of —— : *Habendum to the pchaser in fee simple* upon & subjt to the same trusts & provons as are decld by the ppal deed by reference as afrsd with respt to the ppty thrin comprised [*& subjt to reservons*, p. 502, f. **7.**]

Witnesseth.

Grant.

2. THE TREES are the trees of the settlemt for all the ppses of the S. L. Act, 1925.

(*Ray* v. *Walker*, [1892] 2 Q. B. 88), and the Company may impose restrictions as to the user of the land : *Re Higgins & Hitchman*, 21 Ch. D. 95. As to the rights of the Company's assigns of surface lands as superfluous, where the Company has not purchased the mines, and subsidence has been caused, see *Pountney* v. *Clayton*, 11 Q. B. D. 820. The Company can grant easements over the purchased land : *Grand Junction Canal* v. *Petty*, 21 Q. B. D. 273 ; *Re Gonty & M. S. & L. Rly. Co.*, [1896] 2 Q. B. 439 ; *Arnott* v. *Whitby U. D. C.*, 101 L. T. 14 ; *Arnold* v. *Morgan*, [1911] 2 K. B. 314. As to leasing land not immediately required, see *Macfie* v. *Callander and Oban Rly.*, [1898] A. C. 270.

Easements.

Leases.

(*b*) In a conveyance by the promoters of the undertaking under the Lands C. C. Act, 1845, the word "grant" implies covenants for title (s. 132), which are substantially the same as those which would be implied by a conveyance by the Company as beneficial owners under the L. P. Act, 1925, s. 76, and as to implied covenants, see Norton on Deeds, 498.

Covenants implied by word "grant."

3. The power of appointg a new tree or new trees of the settlemt is vested in the pchaser *or as the case may be*.

4. [*Statement as to value*, p. 525.]

In witness, &c.

LIX.

CONVEYANCE *of* Freeholds *belonging to a* Lunatic so found *by* inquisition, *subject to* Reservations *of* Minerals *and* Surface Rights *and* Easements, *and* Restrictive Covenants, *contained in the* Conveyance *to the* Lunatic *or* Defective (*a*).

Parties. *Parties*, A., *lunatic*, " a pson of unsound mind, actg by B., of, &c., the duly appted committee of his este (hrinar called the committee) ; " 1 ; C. *pchaser*, 2.

Recitals. *Recite convce to A., containing reservations to the vendors X. & Y., in fee simple, of minerals, with rights of workg them by surface or underground works, & rights of way, & water, & other easemts, & containing also restrictive covts, entered into by A. with the vendors as to bldg on, & user of the land, the reservons & covts being noticed shortly :* And whas the Committee as such committee as afsd has agrd on

Mode of conveyance of lands belonging to a lunatic or defective.

(*a*) See the Lunacy Act, 1890, ss. 116, 120 (*a*). Lands belonging to a lunatic or defective must now be conveyed, whether under the Lands Clauses Act, 1845, or the Lunacy Acts, in the name and on behalf of the lunatic or defective. See L. P. Act, 1925, s. 22 (1), which requires the committee or receiver (in the case of a lunatic not so found or a defective) to make or concur in making all requisite dispositions for creating a legal estate under an order in lunacy or of the court, or under any statutory power, in the name and on behalf of the lunatic or defective. The former practice under the Lunacy Acts is thus adopted in all cases. See Lunacy Act, 1890, s. 124, and *Plumpton* v. *Burkinshaw*, [1908], 2 K. B. 572 ; *Re E. G.*, [1914] 1 Ch. 927. As to the former practice under the Lands Clauses Act, 1845, see *Re Tugwell*, 27 Ch. D. 309. In *Re Marshall*, [1920] 1 Ch. 284, a document executed by a lunatic not so found after the appointment of a receiver was held to be a nullity. As to the procedure where the vendor becomes lunatic after the contract, see Lunacy Act, 1890, ss. 120 (*i*), 135 ; *Re Pagani*, [1892] 1 Ch. 236. A deed executed by a lunatic so found during a lucid interval is void : *Re Walker*, [1905] 1 Ch. 160. As to the procedure on purchases by the Court for the benefit of a lunatic, see *Att.-Gen.* v. *Marquis of Ailesbury*, 12 App. Cas. 672 ; and as to adopting a voidable contract to purchase entered into by a lunatic, see *Baldwyn* v. *Smith*, [1900] 1 Ch. 588.

behalf of the sd A. condonally upon the pper consent in that behalf being obtained to sell & transfer to the sd C. the fee simple of the ppty hby assured, subjt to the reservons & restrictions contained in the sd convce of, &c., for the sum of £——. AND WHAS by an order in lunacy made on the —— day of —— by —— in the matter of A., a pson of unsound mind, it was ordered that the Committee shd be at liberty to carry the sd conditional contract into effect & that it shd be referred to the Master in Lunacy to settle & approve of a pper convce of the sd ppty to the sd C., accordgly & that the Committee as such Committee as afsd shd execute & join with all necy parties in executing such convce when approved by the sd Master. AND WHAS the Master in Lunacy has settled & approved of this deed as a pper convce of the sd ppty psuant to the sd order of the —— day of ——, & in testimony of such his approval, the seal of the sd Master has been affixed in the margin hereof: AND WHAS the sd C. on the —— day of —— pd into Court the sum of £—— to the credit of "A., a pson of unsound mind, Proceeds of sale of real este," *or other credit mentioned in the order:* NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & order, & in conson of the sum of £—— pd as afsd, the sd A., **as benefl owner** (*b*), actg by the Committee, as afsd, hby grts unto the sd C., *Parcels*, p. 480: *Habendum to C. in fee simple subjt to reservons & restrictions in former convce*, p. 502, f. **7**: *Covenant by C. with A. to indemnify A. agst restrictive covts*, p. 519, f. **7**: [AND THE sd. A., actg by the sd B., as afsd, hby, &c., *acknowmt & undertakg as to munimts*, p. 515 (*c*)] [*Statement as to value*, p. 525.] IN WITNESS, &c. (*d*).

Witnesseth.

Grant.

(*b*) The Court has jurisdiction, under the Lunacy Act, 1890, s. 124, to authorise a committee selling the land of a lunatic to enter into on his behalf, with the purchaser, the covenants usual and proper in such conveyances including the ordinary covenants for title: *Re Ray*, [1896] 1 Ch. 468.

(*c*) The possession of the deeds by the committee or other custodians on behalf of the lunatic would, it is presumed, be deemed in law the possession of the latter, so that the acknowledgment, &c., is properly given in his name: see *ante*.

(*d*) The signature will be, "A. by B. committee of his este." The attestation will be "Signed, &c., by the above-named A. by B. his committee." A testimonium and attestation in the ordinary form would suffice; see *Lawrie* v. *Lees*, 7 App. Cas. 19.

Form of execution of and attestation to a conveyance by the committee of a lunatic or receiver of a defective.

LX.

CONVEYANCE *of* FREEHOLDS *belonging to a* LUNATIC NOT SO FOUND, *or a* DEFECTIVE (*a*).

Parties. *PARTIES*, A. *lunatic* or *defective*, a pson of unsound mind not so found by inquisition *or* " a defective within the meang of the Mental Deficiency Act, 1913," actg by B. of, &c., being the pson appted to exercise the powers of a committee of his este (hrinar

Recitals. called the Receiver) 1 ; C., *purchaser*, 2. *Recite title of A.*, p. 462, f. **1** : AND WHAS the Receiver has agrd on behalf of the sd A., & conditonally upon the pper consent in that behalf being obtained to sell & transfer to the sd C. the fee simple of the ppty hby assumed for the sum of £——. AND WHAS by an order in lunacy made on the —— day of —— by —— in the matter of A. a pson of unsound mind not so found by inquisition *or* " a defective within the meaning of the Mental Deficiency Act, 1913," it was ordered that the Receiver shd be at liberty to carry the sd condonal contract into effect & that it shd be referred to the Master in Lunacy to settle & approve of a pper convce of the sd ppty to the sd C. accordly ; & that the Receiver, to whom it was ordered that the sd pchase moy shd be pd, shd execute & join with all necessary parties in executg such convce to be approved by the sd Master. AND WHAS the Master in Lunacy has settled & approved of this Deed as a pper convce of the sd ppty psuant to the sd order of the —— day of —— & in testimony of such his approval the

Witnesseth. seal of the sd Master has been affixed in the margin hrof : NOW THIS DEED WITNESSETH that in psuce of the sd agmt & order & in conson of the sum of £—— now pd by the sd C. to the Receiver (the rect of wch sum the Receiver hby acknowes) the sd A. **as benefl owner** actg by the Receiver as afsd hby

Grant. grants unto the sd C. ; *parcels*, p. 480 ; *habendum to C. in fee simple*, p. 500, f. **2** ; & the sd A. actg by the Receiver as afsd hby, &c. ; *acknowmt & undertakg as to munimts*, *p.* 515 ; [*statmt as to value*, p. 525] IN WITNESS, &c.

(*a*) See Lunacy Act, 1890, ss. 116, 120 (*a*) ; Lunacy Act, 1908, s. 1 ; and Mental Deficiency Act, 1913, ss. 1 and 64. The person appointed to exercise the powers of a committee of the estate of a lunatic not so found or of a defective is properly called a receiver, although not so termed in any of the Acts above referred to.

As to the mode of conveying land belonging to a lunatic not so found or a defective, see *ante*, p. 642, note (*a*).

LXI.

CONVEYANCE *of* LANDS *belonging to a* LUNATIC *purchased by the* MANAGERS *of a* PUBLIC ELEMENTARY SCHOOL *under the* EDUCATION ACT, 1921 (*a*).

PARTIES, A., *lunatic* "a person of unsound mind so duly found by inquisition actg by B., of &c., the duly appted committe of his este (hrinar called the Committee) 1; C., D. & E. *the managers of the School or proposed School* (hrinar called the managers), 2. *Recite title of A.*, p. 462, f. 1; AND WHAS the managers are the managers of a public elementary school, known as the —— School, at ——, in the Parish of ——, & county of —— [*or, if the school is not founded, say:* AND WHAS the managers are desirous of establishing a public elementary school to be known as the —— School, at —— & they have obtained the approval of the Board of Educon (*b*) to the establishmt of such school]: AND WHAS the Committee as such committee as afsd has agrd on behalf of the sd A. & condonally upon the pper consent in that behalf being obtained to sell & transfer to the managers, & the managers by virtue of the powers vested in them by the Educon Act, 1921, have agrd to pchas the fee simple of the ppty hby assured as a site for a [an additional] school-house for such school for the sum of £—— being a sum determined by two able practical survors, nominated, one by the committee and one by the managers, which it was agrd shd be taken in full compenson for sevrnce of the ppty hby assured from other ppty belongg to the sd A. or orwise injuriously affectg such other ppty: *Recite order confirming contract; approval of the draft convce by the Master in Lunacy & paymt of pchase-moy into court as in Prec.* LIX., p. 643: NOW THIS DEED WITNESSETH that for effectuatg

Parties. Recitals. Witnesseth.

(*a*) See the Education Act, 1921, s. 30, as to the appointment of managers, and s. 116, as to their power to purchase a school house or a site for the same. See also the Lands Clauses C. Act, 1845, s. 7; the Lunacy Act, 1890, ss. 116, 117, 120 (*a*), 124, the Lunacy Act, 1908, s. 1; and the definition of "property," in s. 341, of the Act of 1890. The sale may be made in consideration of a perpetual rent-charge.

As to the mode of conveying land belonging to a lunatic, see *ante*, p. 642, note (*a*). For variations for the case of a lunatic not so found or of a defective, see Prec. LX., *ante*, p. 644.

(*b*) See the Board of Education Act, 1899, substituting the Board of Education for the Education Department.

the sd sale & for the conson afsd, & under & psuant to the sd order of the —— day of ——, & the powers & provons of the Educon Act, 1921, & the Acts incorporated thereth, the sd A., **as benefi owner** actg by the committee as such committee as afsd hby conveys unto the managers, *Parcels*, p. 480; *habendum*, UNTO THE managers in fee simple, UPON TRUST for the ppses of a public elementary school, within the meang of the Educon Act, 1921, & for no other ppse whatever (*c*). [*Statement as to value*, p. 525.] IN WITNESS, &c.

LXII.

CONVEYANCE *of* LANDS *belonging to a* LUNATIC *to a* LOCAL EDUCATION AUTHORITY (*a*) *purchasing under the* LANDS CLAUSES CONSOLIDATION ACT, 1845.

Parties. *PARTIES*, A., *lunatic*, a prsn of unsound mind so duly found

(*c*) S. 116 (2) of the Education Act, 1921, requires "that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of those purposes which may be specified, and for no other purposes whatever." The same subsection provides for the acquisition of land by the managers under the Acts incorporated therewith (*i.e.* the non-compulsory provisions of the Lands Clauses Acts) or under the School Sites Acts. Upon a purchase under the last-mentioned Acts of land belonging to a lunatic, the committee of the lunatic is by s. 5 of the Act of 1841 empowered to convey and to receive and give a good discharge for the purchase-money; and by s. 2 of the same Act, the land becomes subject to reverter on ceasing to be used for the purposes in that Act mentioned, that is to say, for such of the purposes in that Act mentioned as are specified in the deed of grant: *Att.-Gen.* v. *Shadwell*, [1910] 1 Ch. 92, and cases there cited. See also *Att.-Gen.* v. *Price*, [1912] 1 Ch. 667 where a scheme was sanctioned to carry out cy-près the educational purposes of the trusts declared by the deed of grant; and S. C. *sub nom. Price* v. *Att.-Gen.*, [1914] A. C. 20, where a new scheme was substituted by consent.

(*a*) See the Education Act, 1921, ss. 110–117; incorporating the provisions of the Lands Clauses C. Act, 1845, with respect to the purchase of land by local education authorities, and *cf.* the Public Health Act, 1907, s. 95. Where the land is subject to a restrictive covenant, the Local Education Authority is not liable to an action, but must give compensation, under the Lands Clauses C. Act, 1845, for breach of the covenant: *Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437.

As to the mode of conveying land belonging to a lunatic, whether purchased under compulsory powers or not, see *ante*, p. 642, note (*a*). For variation for the case of a lunatic not so found or of a defective: see Prec. LX., *ante*, p. 644.

by inquisition acting by B., of etc., the duly apptd committee of his estate (hrinar called the Committee), 1 ; the Council of the County [Borough] [Urban District] of, &c., *or* " the Mayor, Aldermen & Burgesses of —— acting by their Council " (*b*), acting as the Local Education Authority (hrinar called " the Council ") [Corporation], 2. *Recite* title of A, p. 462, f. **1**. AND WHAS the ppty hby conveyed is required by the Council [Corporation] for the ppse of providg sufficient public schl accommodon for the area for wch they act, & the Council [Corporation] are by virtue of the Education Act, 1921, & the general Acts incorporated thrwth authorised to take & use the sd lands for the ppses afsd ; AND WHAS the Committee as such committee as afsd has agrd on behalf of the sd A., & conditionally upon the proper consent in that behalf being obtained to sell & transfer to the Council [Corpn] & the Council [Corporation] by virtue of the powers conferred on them resply by the sd Acts or some of them have agreed to pchase the fee simple of the ppty hby assured for the sum of £——, being the sum determined by two able practical survors nominated, one by the Committee & one by the Council [Corporation] accordg to the provons of the Lands C. C. Act, 1845 (*c*), wch sum it was agreed shd include compenson for sevrnce of the ppty hby assured from other ppty belongg to the sd A, or orwise injuriously affectg such other ppty. *Recite order confirming contract ; approval of the draft convce by the Master in Lunacy & paymt of pchase moy into court* (*d*) *as in Prec. LIX.* NOW THIS DEED WITNESSETH that in psuance of the sd agmt & Order, & of the powers & provons

Recital.

(*b*) See *Leeds Institute of Science*, [1909] 1 Ch. 500.

(*c*) See Lands Clauses C. Act, 1845, s. 25 *et seq.* Where the purchase money is fixed by arbitration say, " by Mr. —— an official arbitrator appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919." See Acquisition of Land (Assessment of Compensation) Act, 1919, which provides that where under any statute, whether passed before or after the passing of that Act, land is authorised to be acquired by any government department or any local or public authority, any question of disputed compensation shall be determined by the arbitration of one of a panel of official arbitrators appointed under the section. The rates for the assessment of compensation are contained in s. 2 of the Act.

(*d*) The purchase money might in this case be invested under an order in lunacy without being paid into Court : *Re Milnes*, 1 Ch. D. 28 ; *Re Buckingham*, 2 Ch. D. 690 ; and see s. 69 of the Act. As to payment into Court of the compensation money : see L. P. Act, 1925, s. 42 (7).

of the Education Act, 1921 & the Acts incorporated thereth, the sd A. **as benefl owner** acting by the Committee as such Committee as afsd hby conveys unto the Council [Corporation] ; *parcels*, p. 480 ; *habendum* unto the Council [Corporation] in fee simple. [*Statement as to value*, p. 525.] IN WITNESS, &c.

LXIII.

CONVEYANCE *of* FREEHOLDS *by* OFFICIAL *and other* TRUSTEES *of a* CHARITY (*a*).

Parties. *PARTIES*, A., The Official Tree of Charity Lands (hrinar called the official tree), 1 (*b*) ; A., B. & C., &c., being the trees

Sales of charity land. (*a*) Many charitable trust deeds contain powers of sale, but, except in the case of an exempted charity, this power cannot be exercised without the authority of a statute, "or of a Court or Judge of competent jurisdiction, or according to a scheme legally authorised, or with the approval of the Charity Commissioners" ; Charitable Trusts Amendment Act, 1855, s. 29 (as to the meaning of which see *Re Mason's Orphanage, & L. & N. W. Rly. Co.*, [1896] 1 Ch. 596 ; *Att.-Gen.* v. *Nat. Epileptic Hospital*, [1904] 2 Ch. 252). As the power of the Commissioners to authorise a sale is given by the Charitable Trusts Act, 1853, s. 24, which by s. 62, as extended by the Charitable Trusts, &c., Act, 1894, s. 4, exempts certain institutions and any charity wholly maintained by voluntary contributions from the operation of the Act, and as the two Acts have to be construed together, charities exempted from the Act of 1853 are exempt from the Act of 1855 : *Re Church Army*, 75 L. J. Ch. 467. A single gift made once for all for the purpose of founding a charity does not constitute it a charity "wholly maintained by voluntary contributions" within the meaning of s. 62, notwithstanding that the trustees are

(*b*) See as to the constitution of the Official Trustee a corporation sole, the Charitable Trusts Amendment Act, 1855, s. 15 ; and as to the power of the Official Trustee to hold lands, the Charitable Trusts Act, 1887. Where the Official Trustee is party to the deed the draft must be approved in the office so far s it relates to him. Under the S. L. Act, 1925, s. 29 (1), all land vested in trustees on or for charitable, ecclesiastical or public trusts or purposes is to be deemed settled land, and the trustees without being thereby constituted statutory owners have in reference to the land all the powers conferred by the Act on a tenant for life and on the trustees of a settlement. By sub-s. 2, where the land is vested in the official trustee of charity lands, the said powers are exercisable by the managing trustees or committee of management and the official trustee will not be liable for giving effect to directions given by the managing trustees or committee of management. By sub-s. 3, nothing in this section, is to affect the jurisdiction of the Court, Charity Commissioners, or other competent authority in regard to the administration of charitable, ecclesiastical, or public trusts.

of the, *name of charity* (hrinar called the trees), 2; & D., *pchaser*, 3. WHAS the trees are the duly constituted trees Recitals.

not bound to invest or preserve the funds so derived, but may expend them as they think fit: *Re Richard Murray Hospital*, [1914] 2 Ch. 713.

In the case of a mixed charity, *i.e.* a charity maintained partly by voluntary subscription and partly by income arising from an "endowment" in the restricted sense in which that expression, where it occurs in the latter part of s. 62, was interpreted by Lord Davey in *Re Clergy Orphan Corpn.*, [1894] 3 Ch. at p. 151, the provisions of the Act are by that section made to apply to the income from the "endowment" only to the exclusion of voluntary contributions; and gifts for the general purposes of such a charity which may be applied as income are exempted from the jurisdiction of the Charity Commissioners: *Re Corpn. of Sons of Clergy*, [1893] 1 Ch. 178; even if they have been invested: *Re Clergy Orphan Corpn., sup.*; unless by a deed declaring the trusts of such gifts, it can no longer be applied as income: *Att.-Gen.* v. *Mathieson*, [1907] 2 Ch. 383. Cf. *Re Child Villiers' Application*, [1922] 1 Ch. 394; *Re Shakespeare Memorial Trust*, [1923] 2 Ch. 398, where the charity was not a mixed charity at the time of the gift.

In the case of a mixed charity, the property of the charity is divided into two classes, namely, endowed and unendowed. The former class comprises all property the income only of which is applicable for the maintenance of the charity; and the latter class comprises all property the capital of which may be expended for the general purposes of the charity, all of which is embraced by the term "voluntary contribution" in the Act: see *Re Society for Training Teachers of the Deaf, &c.*, [1907] 2 Ch. 486. For instances of charities held to be wholly supported by voluntary contributions: see *Re Parry & Horton*, 49 Sol. J. 500; *Re Society for Training Teachers of the Deaf, &c., sup.*; *Re Wesleyan Methodist Chapel*, [1909] 1 Ch. 454. For instances of "mixed charities" see *Re Clergy Orphan Corpn.*, [1894] 3 Ch. 145; *Re Harding, &c.*, 92 L. T. 641; *Re Orphan Working School*, [1912] 2 Ch. 167; *Att.-Gen.* v. *Foundling Hospital*, [1914] 2 Ch. 154. For instances of endowed charities, see *Re Gilchrist*, [1895] 1 Ch. 367; *Re Richard Murray Hospital*, [1914] 2 Ch. 713; *Re Child Villiers' Application*, [1922] 1 Ch. 394.

As to the position of a charity possessed of land and buildings occupied by a school but yielding no income and maintained partly by voluntary contributions and partly by grants from public authorities, see *Re Stockport, &c., Schools*, [1898] 2 Ch. 687. The exemption in the Act of "any building registered as a place of meeting for religious worship" is extended to certain buildings and land held therewith by the Charitable Trusts &c. Act, 1894. A Reformatory School is not within the exception to the exemption from s. 62 of the Act of 1853: *Re Stockport, &c., Schools*, [1898] 2 Ch. 687.

By the Act of 1855, s. 37, the Official Trustee of Charity Lands may be authorised by the Board to convey lands, including those vested in him by the Act of 1853, s. 48, and the Act of 1855, s. 15. See also s. 12 of the Act of 1869, substituted for s. 16 of the Act of 1860, enabling a majority of the trustees to convey on behalf of all the trustees and the official trustee. The transitional provisions contained in the L. P. Act, 1925, First Schedule, Part II., have not the effect of vesting in the managing trustees or committee of management of a charity any legal estate vested in the official

of the sd, *charity* (hrinar called "the charity"): And whas the lands hrinar assured form pt of the estes of the charity: And whas by an order made by the Board of Charity Commrs for England & Wales on, &c. (*a*) [by a scheme made under the Endowed Schools Act, & approved

trustee. See *ib.*, para. 7 (*k*). As to Official Trustees of Charitable Funds, see Charitable Trusts Act, 1887, ss 4, 5, 6.

As to the power of the trustees of a charity exempt from the Charitable Trusts Acts, to make a good title on sale of the property of the Charity, see *Att.-Gen.* v. *Warren*, 2 Swanst, 302; *Re Clergy Orphan Corpn.*, *sup.*, at p. 154. See *Re Howard Street, &c., Chapel*, [1913] 2 Ch. at p. 696, and the S. L. Act, 1925, s. 29.

By the Mortmain Act, 1891, ss. 5, 6, 9, the sale of land acquired by a charity under the will of a testator dying after the passing of the Act is made obligatory, except as therein mentioned.

Where land is compulsorily acquired from a charity by a local authority under the Lands C. C. Acts, the costs of the trustees in applying to the Charity Commissioners for a new scheme must be paid by the local authority: *Re Wood Green, &c., Charity*, [1909] 1 Ch. 263. As to payment out to the trustees of a charity of purchase-money paid into Court: see *Re Sheffield Corpn., &c.*, [1903] 1 Ch. 208.

The Allotments Extension Act, 1882, did not take away from the Charity Commissioners the power of authorising a sale of charity lands vested in them under the Charitable Trusts Acts: *Parish of Sutton to Church*, 26 Ch. D. 173; see also the Small Holdings &c., Act, 1908, s. 33 (2), as regards sale or lease of lands by charitable trustees to a local authority.

By an order of 11th August, 1902 (46 Sol. J. 717), most of the powers of the Charity Commissioners relating to education were transferred to the Board of Education: see *Re Betton's Charity*, [1908] 1 Ch. 205; *Re Berkhampstead Grammar School*, [1908] 2 Ch. 25.

Purchases by trustees of charities.

The trustees of any charity, with the consent of the Board, may purchase, (1) under the Charitable Trusts Act, 1853, s. 25, any rent charged on the charity estate; (2) under the Act of 1855, s. 35, and without any licence in mortmain, any land by way of reinvestment of proceeds of sale of land, &c.; (3) under the Act of 1860, s. 15, and with the like consent, the incorporated trustees of any charity may without any licence in mortmain purchase lands required as sites for building for the purposes of the charity. The consent of the Board is given in two ways: (1) When the purchase is completed an order is made approving the purchase and vesting the legal estate in the official trustee, or (2) before the purchase is made, an order authorising the purchase is made. In place of the requirements respecting attestation and enrolment provided by the Mortmain and Charitable Uses Act, 1888, s. 4 (6) and (9); the conveyance, or if the charitable uses are declared by a separate instrument, then that instrument must be sent to the offices of the Charity Commissioners within six months after execution or such extended period as the Commissioners may allow, for the purpose of being recorded in the books of the Commissioners: S. L. Act, 1925, s. 29 (4).

A corporate body duly authorised to undertake trusts may but the Public Trustee may not be appointed custodian trustee of charitable property: P. T. Act, 1906, s. 2 (5); *Re Cherry*, [1914] 1 Ch. 83.

(*a*) See Charitable Trusts Act, 1853, s. 6.

by His Majesty in Council on, &c.], the legal este in the land hby conveyed was vested in the official tree in trust for the charity: AND WHAS by an order of the sd Board, made on, &c., the trees were authorised within —— months from the date throf to sell the lands described in the schdle thereto [being the lands hrinar described & conveyed] for not less than the sum of £——, & to do & execute all pper acts & assurces for carryg the sd sale into effect: AND by the same order the official tree was authorised & directed to concur in the convce of the sd land if his concurrce shd be required, *Contract for sale:* NOW THIS DEED WITNESSETH that in psuance of the sd order & in conson of the sum of £—— pd to the trees by the sd D. for the pchase of the fee simple of the sd lands (the receipt whrof the trees hby acknowe) the official tree, psuant to the authority given to him by the recited order, & at the request of the trees testified by their execution hrof, but not so as to imply any covt (*b*), hby conveys, & the trees as trees hby convey & confirm to the sd D., *Parcels*, p. 480. TO HOLD the same UNTO the sd D., in fee simple: [*Acknowmt by trees as to munimts retained*, p. 515.] [*Statement as to value*, p. 525.] IN WITNESS, &c.

Authority to trustees to sell.

Authority to official trustee to concur.

Witnesseth.

Grant.

Habendum to purchaser.

LXIV.

CONVEYANCE *by* TENANT *for* LIFE *of* SURFACE LANDS, *and of* MINERALS *under other* LANDS *which were* RESERVED *on* PREVIOUS SALES *of the* SURFACE.

PARTIES, A., *tenant for life* (hrinar called the vendor), 1; B. & C., *trees* (hrinar called the trees), 2; D. *pchaser* (hrinar called the pchaser), 3. WHAS by a ppal vesting deed, dated, &c., & made psuance to s. 37 of the S. L. Act, 1925, between, &c., it was declared that the lands described in the first pt of the first schdle hrto & the mines of coal & ironstone & other mines or minerals in, upon or underlying the lands described in the second pt of the same schdle with the rts of workg & gettg the same, thereto annexed being the mines or minerals with the

Recitals.

Title to surface.

(*b*) The Official Trustee does not enter into any covenants; and the statutory covenant which would be implied by his conveying as trustee and under the order is therefore excluded.

rts of working & getting the same, wch on sales then previously effected of the sd surface lands were excepted or reserved by the several convces the particulars whf are contained in the sd second pt of the same schdle hereto were vested with other ppty comprising the —— Settled Estes in the sd A. in fee simple upon the trusts & subjt to the powers & provons upon, & subjt to wch under the settlemt thrin referred to or orwise the same ought from time to time thcefrwd to be held. And it was thby decld that the trees were the trees of the sd settlemt for the ppses of the S. L. Act, 1925 : [*Recite certificate of counsel* as *to title as in Prec.* XXXVI., *ante*, p. 595.] And whas the lands described in the sd first schdle hto are delineated on the map or plan hto annexed, in wch the lands comprised in the first pt of such schdle are coloured ——, & the lands comprised in the second pt throf are coloured —— : *Contract for sale by A.*, p. 474, f. **15** " of the fee simple of the lands described in the first pt of the sd first schdle hto, & of the mines of coal & ironstone & other mines & minerals so reserved as afsd in upon or under the lands described in the second pt of such schdle for the sum of £—— : " NOW THIS DEED WITNESSETH that in psuance, &c., & in conson of the sum of £—— now pd by the pchaser to the trees (the receipt, &c.), the vendor in exercise of the power for this ppse conferred on him by the S. L. Act, 1925, hby as tree conveys unto the pchaser, First, all Those closes or parcels of land, messes, tenemts & hds, situate, &c., parlarly described in the first pt of the first schdle hto, & coloured —— on the plan hto annexed, includg all mines & minerals in, upon, or under the same lands & premes, And secondly, all the coal & ironstone, & other mines & minerals whatsr whether opened & in workg or not wch under or by virtue of the exceptions or reservons contained in the respective convces or assurces mentd in the second pt of the first schdle hto or orwise the vendor is entitled to or has power to dispose of, lying or being in or under the lands & hds situate, &c., wch are parlarly described in such second pt of the sd first schdle, & are coloured —— in the sd map or plan, Togr with all such liberties, powers, & authorities of enterg upon the sd lands descd in the second pt of the sd first schdle, & coloured —— in the sd map or plan, & searchg for, workg, gettg, dressg, & carryg away the sd coal, ironstone, & other mines & minerals, & makg pits or shafts, & excavatg & drivg underground levels, passages, adits, & headways, laying down

Reference to plan.

Contract for sale.

Witnesseth.

Grant.

Surface parcels.

Minerals.

Powers of working.

tramways, other ways & roads underground, & erectg bldgs, engines, pumps, machinery, & works, & stackg or laying up the minerals or refuse raised out of the sd premes, & makg roads or tramways over the surface of the sd lands or any other lands for workg, gettg, & carryg away the sd minerals or orwise in relation thereto, as under or by virtue of the sd respective convces or assurces mentd in the second pt of the sd first schdle hto or orwise, the vendor is entitled to or has power to dispose of, BUT SUBJT to such liability as the vendor is or he or his succors in title may become subjt to of makg compenson to the surface owners or occupiers of the sd lands & premes described in the second pt of the sd first schdle, for any damage or injury done or caused by the exercise or use of any of the liberties & authorities afsd, TOGR WITH all way leaves, watercourses, rights, easemts, & appurts, held, used, occupied, or enjoyed in connection with any of the mines & minerals hby assured, or for workg, obtaing, gettg, or carryg away such mines & minerals or the produce throf or orwise in relation thereto: *Habendum to C. in fee simple* subjt to the subsistg leases or agrmts for leases mentd in the sd first schdle hto," p. 501: *Acknowmt & undertakg by A. as to munimts*, p. 515. [*Statement as to value*, p. 525.] IN WITNESS, &c.

Subject to liability of making compensation.

General words.

[*Schdle of parcels in two parts, the composition of wch is indicated by the recitals.*]

[*Schdle of Munimts.*]

LXV.

GRANT *of* RIGHT *of* WAY.

PARTIES, A., *grtor*, 1; B. & C., *grtees*, 2. *Recite the closing of a lane passg through lands of A., under the Highways Act*, 1835, *ss.* 84 *to* 92, *as amended by the Local Government Act*, 1894, *ss.* 6, 13, *on the applicon of A., the land being bounded as to pt by a farm & lands vested in B. & C. as este owners in respect of the fee simple throf.* AND WHAS previously to the applicon for the sd order it was agrd by & betn the pties hto that the sd A., in conson of the sd B. & C. consentg to & not opposg such applicon, shd execute & enter into such grt & covt to & with

Recitals.

Agreement.

them as such este owners as afsd, for securg a substituted right of way over the lands of the sd A., & orwise, as are hrinar contained: NOW THIS DEED WITNESSETH that in psuance of such agrmt, & for the conson afsd, the sd A., as benefl owner, & to the intent that the rt of way hby granted may become annexed to the farm & lands so vested in the sd B. & C. as afsd, hby grts unto the sd B. & C. in fee simple (*a*), FULL & free right & liberty at all times hrafter (*b*), *continue as at* p. 487, along, over, & upon a new road or lane made through the lands of the sd A., situate, &c., betn the points marked, &c., on the plan drawn in the margin hrof, & the bridge over the watercourse as shown in the sd plan, & being —— feet in length, & —— feet in width (*c*), AND the sd A. hby covts with the sd B. & C., that he the sd A., or his successors in title, will at his or their own cost at all times hrafter, keep & maintain the sd new lane or road over wch a right of way is hrinbfe grted includg the sd bridge over the watercourse in a pper state of repair & condon: PROVD ALWAYS that it shl be lawful for the sd A., & his successors in title, to place & keep gates at the points marked, &c., on the sd plan, he & they maintaing such gates in good repair & condon. IN WITNESS, &c.

Witnesseth.

Grant.

Right of way.

Covenant by grantor (*d*).

Proviso.

(*a*) See L. P. Act, 1925, s. 187. A legal easement cannot exist except as appurtenant to land. If the land to which the right of way is intended to be annexed does not appear from the earlier part of the deed the reference may be to "the lands coloured —— on the plan drawn in the margin hrof," and the plan will afterwards be referred to as "the sd plan."

(*b*) In order to avoid mineral rights duty, it will be safer where the grant is "for all purposes" to add "except for the ppose of working mines & minerals."

(*c*) As to the importance of defining the way, see *Deacon* v. *S. E. Rly. Co*, 61 L. T. 377.

(*d*) The covenant in the text imposes a perpetual liability on A. and his representatives. The owner of the easement has a right to repair it: Elph. Introd., 7th ed., 158.

LXVI.

CONVEYANCE *on* SALE *under* COMPULSORY POWERS (*a*) *of* FREEHOLDS *to a* PARISH COUNCIL *for a* RECREATION GROUND (*b*).

PARTIES, A., *vendor*, 1; the Parish Council of —— (hrinar called the Council), *pchasers*, 2. *Recite title of A.*; AND WHAS the lands hby grted are required by the Council for the pposes of a recreation ground: AND WHAS the County Council of the sd county —— by writing under their common seal bearing date the —— day of —— ordered that, as regards the Council & the acquiring by them for a recreation ground of the hds hby assured, there shd be put & be in force the provons of the Lands C. C. Act, 1845, with respt to the pchase & taking of land orwise than by agrmt, & incorporated in the sd order the sevl Acts & sections mentd in section 9, subsect. 10, of the Local Government Act, 1894; AND WHAS the Minister of Health (*c*) by writing under his official seal & under the hand of —— Assistant Secretary, acting on his behalf, dated the —— day of ——, duly confirmed the sd order [subjt to the followg amendmt, namely that, *add terms of amendmt*]; AND WHAS the sd A. has agrd to sell & transfer to the Council & the Council, by virtue of the powers vested in them by the sd order & the sevl Acts & sections incorporated therewith, have agrd to pchase as a site for a recreation ground the fee simple of the lands hby assured at the price of £——, being the sum determined, &c. (*d*), & which sum it was agrd should include, [the value of all mines & minerals under the lands hby assured & also] compenson for the severce of the sd lands hby assured from other ppty of the vendor or orwise

Recitals.

Agreement for sale.

(*a*) See Local Government Act, 1894, s. 9.

(*b*) See s. 8 enumerating certain purposes for which land may be acquired by a Parish Council. As to other purposes for which the acquisition of land is authorised, see Small Holdings and Allotments Acts, 1908 to 1919. As to execution by a Parish Council, see Local Government Act, 1894, s. 3 (9), and by a parish meeting, see s. 19 (6) (11) of that Act.

(*c*) The powers and duties of the Local Government Board were by s. 3 of the Ministry of Health Act, 1919, transferred to the Ministry of Health.

(*d*) In case of dispute the compensation payable will be determined by an official arbitrator under the Acquisition of Land (Assessment and Compensation) Act, 1919. See *ante*, p. 647, note (*c*).

Witnesseth.

injuriously affectg such other ppty: NOW THIS DEED WITNESSETH that in psuance, &c., & in conson, &c., *as at* p. 478, & under & psuant to the sd order of the —— day of ——, & the sd order of the Minister of Health confirmg the same, & the sevl Acts & sections incorporated therewith, the sd A., **as benefl owner**, hby conveys unto the Council, All &c. *Parcels*, p. 480, [togr with *or* " except & reserving out of the assurce hby made " all mines & minerals under the sd ppty & premes]; *Habendum* Unto the Council in fee simple for the ppose of a recreation ground for the sd parish of —— [discharged from all right of the sd A. & psons deriving title under him to pre-emption in respt of the sd premes in case the same shl hrafter be sold by the Council]. *Acknowmt & undertaking by vendor as to munimts*, p. 515. [*Statement as to value*, p. 525.] IN WITNESS, &c.

LXVII.

CONVEYANCE *to* DISTRICT COUNCIL *of* LAND *taken under an* ORDER *of the* MINISTER OF HEALTH *confirmed by* PARLIAMENT (*a*).

Parties. Recitals.

PARTIES, A., of, &c., *vendor*, 1; & the Urban District Council of —— (hrinar called the Council) *pchasers*, 2. WHAS under

(*a*) To be produced to the Commissioners of Inland Revenue with copy of Act; see Fin. Act, 1895, s. 12, Alpe, 16th ed., 140.

An Urban District Council can acquire, sell, exchange, or lease land under the Public Health Act, 1875, ss. 175 & 176; and the P. H. A. Amendment Act, 1907, s. 95, for the purposes of those Acts. See further as to the power of local and other public authorities to acquire land for various purposes under various statutes, Vol. 2, pp. 287 *et seq.*; and as to the application of the Mortmain Acts to assurances to local authorities, Vol. 2, p. 283.

Restrictive covenants by local authority.

A local authority purchasing land by agreement under the Public Health Acts for one of the purposes of those Acts, may enter into covenants with the vendor restrictive of the user of the land for other purposes: *Stourcliffe Estates Co.* v. *Bournemouth Corpn.*, [1910] 2 Ch. 12.

Superfluous lands.

By s. 95 of the P. H. Acts Amendment Act, 1907, power is conferred upon a local authority to appropriate land not required for the purpose for which it was acquired, for any purpose approved by the Local Government Board (now the Ministry of Health: see Ministry of Health Act, 1919, s. 3); subject, nevertheless, to any special covenant or condition affecting the use of the land attached thereto at the time of the purchase by the local authority, or to any special condition affecting the

& by virtue of the —— Order, 19—, wch was confirmed by the Ministry of Health's Provisional Orders Confirmation (No. ——) Act, 19—, the Council has power for the pposes of —— to acquire land under & subjt to the provons of the Public Health Act, 1875. *Recite title of A.*, p. 462, f. **2**; AND WHAS the Council in exercise of the powers vested in them as hrinbfe is recited have agrd to pchase & the sd A. as such este owner as afsd has agrd to sell & transfer to the Council the fee simple of the ppty hby assured free from incumbces for the sum of £——: NOW THIS DEED WITNESSTH, that in psuance, &c., & in conson, &c., now to the sd A. pd by the Council (the receipt, &c.), he the sd A. as benefl owner, hby grts unto the Council, *Parcels*, p. 480, TO HOLD the same UNTO the Council, in fee simple for the pposes authorised by the sd order. [*Statement as to value*, p. 525.] IN WITNESS, &c. Witnesseth.

LXVIII.

CONVEYANCE *of* GLEBE LAND *by a* RECTOR, *with* CONSENT *of the* PATRON *and the* ECCLESIASTICAL COMMISSIONERS *under the* ECCLESIASTICAL LEASING ACTS (*b*) *to a* COUNTY COUNCIL (*c*). GRANT *and* RESERVATION *of* RIGHTS *of* WAY.

PARTIES, A., "rector of the benefice or rectory & parish church of ——, in the county of ——," 1; B., "patron of Parties.

use of the land contained in any local Act, and subject also to the provisions contained in that section protecting neighbouring owners from nuisance caused by such appropriation. As to the former law on this subject, see the cases cited in Vol. 2, p. 288. As to the sale of superfluous land, see Public Health Act, 1875, s. 175.

(*b*) The conveyance in this case is made under the Acts which have the above misleading short title, namely, the Ecclesiastical Leasing Acts, 1842, 1858 & 1865 (the Act of 1865 relating only to sales for perpetual chief rents). The authority to sell is given by the Act of 1858, s. 1. As to the consents necessary, see the Act of 1842, ss. 20 *et seq.*, and the Act of 1858, s. 1. As to the payment of the purchase-money, see the Act As to sales of glebe lands. Ecclesiastical

(*c*) See the Local Government Act, 1888, s. 65, giving power to acquire land, and incorporating the provisions of ss. 176, 177, and 178 of the Public Health Act, 1875; s. 79, sub-s. (1), as to the corporate name, and dispensing with a licence in mortmain; s. 79, sub-s. (3), incorporating the various enactments relative to the acquisition of land on behalf of County or Quarter Sessions or Justices; and s. 80, as to payments out of the County Fund. See also Vol. 2, pp. 287 *et seq.* As to conveyances to County Councils.

the sd rectory," 2; the Ecclesiastical Commrs for England (hrinar called the Commrs), 3; the —— County Council

Leasing Acts.

of 1858, s. 2: *Ecclesiastical Commrs.* v. *Pinney*, [1899] 1 Ch. 99. The execution of the conveyance by the necessary consenting parties is conclusive that the Acts have been complied with, see the Act of 1842, s. 7. By the Act of 1858, s. 1, three months' notice was to be given to the bishop, but the Glebe Lands Act, 1888, s. 11, substitutes for this the notice prescribed by the rules under that Act; see the Sale of Glebe Land Rules, [1909] W. N., pt. 2, p. 317. The Act of 1858, by s. 6 excepted out of its operation lands capable of being sold under 14 & 15 Vict. c. 104 (extended by 24 & 25 Vict. c. 105, s. 3, to rectors and vicars), *i.e.*, lands subject to leases renewable under the old practice, but as that Act must be almost spent the exception is unimportant. See also the provisions in s. 3 of 24 & 25 Vict. c. 105, giving to incumbents all the powers of sale, &c., possessed by any Ecclesiastical Corporation under any Act in force. A list of the statutes authorising sales by Ecclesiastical Corporations will be found in the index to the statutes in force under the head CORPORATION (2) ECCLESIASTICAL (*a*). The S. L. Acts, 1882 to 1890 had no application to ecclesiastical property: *Ex p. Vicar of Castle Bytham*, [1895] 1 Ch. 348; *Re Bishop of Bath & Wells*, [1899] 2 Ch. 138; but the S. L. Act, 1925, s. 29, applies to land vested in trustees for ecclesiastical as well as charitable purposes; and the incumbent has, consequently, but subject to the proper consents, the same extended powers of sale as by that Act are conferred upon a tenant for life and on the trustees of a settlement. See *ante*, p. 587.

Sale under Private Act.

Where by a private Act, glebe land was vested in trustees with power to sell with the consent of the patron, to be given in case of infancy of the patron by his guardian, a claim by the trustees of a settlement, which included the advowson and conferred upon them the right of presentation during the minority of a tenant in tail, to be patrons for the purpose of giving the consent required by the Act, was disallowed in *Leigh* v. *Leigh*, [1902] 1 Ch. 400.

Glebe Lands Act, 1888.

The Glebe Lands Act, 1888, has created a new mode of procedure for the sale of glebe lands under the sanction of the Land Commissioners (now the Ministry of Agriculture and Fisheries) in lieu of the Ecclesiastical Commissioners, and with an enlarged range of investment for the purchase-money; but by s. 11 the powers of sale under the Ecclesiastical Leasing Acts are kept alive; and by s. 5, the Act is not to apply to land subject to a lease for originally more than 21 years, or where the rent is less than two-thirds the full value. If the sale were made under that Act the Minister would not be made a party, but the order of the Minister sanctioning the sale would be recited. See the rules under the Act above referred to, of which copies with forms for use thereunder can be obtained from the Ministry, Old Bailey, London, E.C.

Minerals.

As to minerals, see the statutes 5 & 6 Vict. c. 108; 21 & 22 Vict. c. 57; and *Ecclesiastical Commrs.* v. *Wodehouse*, [1895] 1 Ch. 552. See also the Act of 1888, s. 5 (2) c.

Parsonage, house, &c.

The parsonage, house, garden, and appurtenances are excepted from the operation of the Act of 1888 (see ss. 2 & 3); but may be sold by the incumbent with the consent of the ordinary and patron and of the archbishop of the province under ss. 7 and 8 of the Parsonages Act, 1838, as amended by the Statute 1 & 2 Vict. c. 29 and the Parsonages Act, 1911.

(hrinar called the Council), 4. *Recite title of rector:* AND WHAS it has been made to appear to the satisfon of the Commrs, that the sd piece of land may, to the permanent advantage of the este & endowmts belonging to the sd rectory, be sold for the sum & in mner hrinar mentd: AND WHAS the sd A., with the consent of the sd B., as patron (*a*) of the sd rectory, & with the approval of the Commrs, has agrd to sell & the Council has under the powers of the Local Government Act, 1888, agrd to pchase for the pposes authorised by section —— of the Public Health Act, 1875, the fee simple of the sd piece of land, togr with the right of way hby grted over other pts of the glebe lands of the sd rectory, free from all charges & incumbces, but subjt to such reservon as is hrinar contained, at the price of £——: AND WHAS due notice of the sd proposed sale was given to the Rt Revd —— Lord Bishop of —— [& to the patron of the sd benefice], on the —— day of —— last: NOW THIS DEED WITNESSETH that in psuance of the sd agrmt, & in consn of the sum of £—— pd by the treasurer of the sd county out of the county fund to the account of the Commrs at the Bank of England, as directed by the Commrs in that behalf (the paymt of wch sd sum is intended to be acknowed by a memo endorsed on these psnts (*b*), signed by —— & —— as two of the joint treasurers of the Commrs, the sd A., with the consent (hby testified) of the sd B., as such patron as afsd, & also with the approval (hby testified) of the Commrs, & in psuance of the power or authority in that behalf given to him by the Ecclesiastical Leasing Acts, & of every other power or authority enablg him in this behalf hby grts unto the Council, *Parcels*, p. 480, TOGR with, *right of way*, p. 487: *Reservon* to "the sd A. & his succors in title," *of right of way*, p. 496: TO HOLD the same UNTO the Council in fee simple for the pposes afsd (*c*). SUBJT to the reservon hrinbfe contd, & also subjt to the tithe commutation rent-charge (if any), & to all other (if any),

Agreement for sale.

Notice given to Bishop.

Witnesseth.

Grant.

Habendum.

(*a*) This assumes that the patron is capable of consenting. The rules of 1909, r. 1, provide that notice must be given to the bishop and the patron in the form prescribed.

(*b*) See *ante*, p. 478, note (*f*).

(*c*) The purpose for which the land is required should be shown in order that it may appear to be within the exceptions contained in the Mortmain Act, 1892.

duties, paymts, & obligons, ecclesiastical & civil, charged upon or payable out of the sd premes hby grted (*d*), & to all rights of way & easemts (if any) affectg the same; *Covenant by A. agst incumbces,* p. 512 (*e*). [*Statement as to value,* p. 525.] In witness, &c.

LXIX.

CONVEYANCE *by the* Ecclesiastical Commissioners *of* Lands *and* Tithe Rent-charge *on other lands subject to a* Term of Years *into which a* Lease for Lives *has been* Converted *by the* Law of Property Act, 1925 (*f*).

Parties.

Parties, The Ecclesiastical Commrs for England (hrinar called the Commrs), 1; A. & B., *the holders of the lease for lives,* 2; C., *pchaser,* 3. Whas the pieces of land, tithe rent-charge or rent-charges, & ppty hrinar mentd were formerly pt of the possons of the Archbishop [Bishop] of —— in right of his See; *Recite lease for lives of lands & tithes on other lands;* And whas by virtue of the sevl Acts of Parliamt relatg to the Commrs, & of an Order in Council, dated, &c., & duly published in the London Gazette on the —— day of ——, ratifying a scheme of the Commrs thrin recited or referred to, the reversion of the sd pieces of land, tithe rent-charge, & premes, comprised in the sd lease of, &c., & the rent reserved by the same lease became vested in the Commrs for the pposes of the sd Acts: And whas by an Order in Council dated, &c., & published in the London Gazette of, &c., ratifying a scheme of the Commrs thrin recited or referred to, the Commrs were authorised to dispose of the sd premes in reversion expectant on the sd lease with the consent of the sd A. & B.; And Whas by the effect of the L. P. Act, 1925, all the sd premes so previously vested in the Commrs in reversion as afsd have become vested in them as este owners in respt of the fee simple thereof subjt to a term of ninety yrs by the sd Act vested in the sd A. & B.,

Recitals. Former title to freehold. Lease for lives. Reversion vested in Ecclesiastical Commissioners.

Confirmation of scheme.

(*d*) See *Re Alms Corn Charity,* [1901] 2 Ch. 750.

(*e*) See *ante,* p. 510, note. Incumbents selling under the above Acts do not usually give covenants for title.

(*f*) See the Acts referred to in 2 Dav. Prec., 4th ed., pt. 1, p. 460, note; and Phillimore, 2nd ed., pp. 1658 *et seq.* See also the L. P. Act, 1925, s. 149 (6).

& determinable after the death of the survor of them the sd A. & B., by notice as in the sd Act provd (*g*). AND WHAS the Commrs, in psuance of their sd Acts, & the sd lastly mentd Order in Council, & in exercise of the powers conferred on them by the S. L. Act, 1925 (*h*), have with the consent (hby testified) of the sd A. & B., agrd with the sd C. for the sale to him of their sd este in the sd lands, tithe rent-charge, & premes comprised in the recited lease subjt to the sd term of ninety-nine yrs determinable as afsd & subjt also as hrinar mentd, for the sum of £——, being the conson wch upon due calculon & enquiry has appeared to the Commrs to be just & reasonable: NOW THIS DEED WITNESSETH that in psuance of the sd agrmt, & in conson of the sum of £——, now pd by the sd C. to the account of the Commrs at the Bank of England, as directed by the Commrs in that behalf (the paymt of wch sd sum is intended to be acknowed by a memo endorsed on these psnts signed by —— & —— as two of the joint treasurers of the Commrs), they, the Commrs, as trees, in psuance of the sd Order in Council of the —— day of ——, & of every or any other power or authority enablg them in this behalf, & with the consent (hby testified) of the sd A. & B. as the psns in whom the sd term of ninety yrs determinable as afsd is now legally vested, hby grt unto the sd C., First, ALL THOSE pieces or pcels of land, &c., and secondly, ALL that or those the sd tithe commutation rent-charge (*i*) or rent-charges, amtg to £—— p.a., arisg or payable in respt of the lands in the parish of ——, in the county of ——, wch are parlarly mentd or described in the schdle hto, togr with all powers, rights, & remedies, for the recovery of such rent-charge or rent-charges: *Habendum to C. in fee simple*, p. 500, SUBJT to the sd term of ninety yrs determinable as afsd & subjt to all rights of way & other easemts, & subjt to & charged with

Contract for sale.

Witnesseth.

Grant.

Parcels.

Habendum.

(*g*) See the L. P. Act, 1925, ss. 149 (6) and 202.

(*h*) See the S. L. Act, 1925, s. 29.

(*i*) The tithe rent-charge substituted for tithe by s. 67 of the Tithe Act, 1836, is a rent within the definition of "rent" in s. 1 of the R. P. Limitation Act, 1833: *Asplen* v. *Pullin*, [1917] 1 K. B. 187. By the Tithe Act, 1925, tithe rent-charge is now stablised at £105 for every £100 of commuted tithe rent-charge under the Tithe Act, 1836, with an additional £4 10*s.* for every £100 of tithe rent-charge payable by way of sinking fund in respect of tithe rent-charge attached to a benefice or to an ecclesiastical corporation. By means of this sinking fund tithe rent-charges attached to a benefice will be extinguished in 85 years, or in 81½ years if attached to an ecclesiastical corporation.

all tithe rent-charge (if any), & to all other (if any) duties, paymts, & obligatns, ecclesiastical & civil, charged upon or payable out of the sd premes hby granted. [*Statement as to value*, p. 525.] IN WITNESS, &c.

The Schedule above referred to.

LXX.

CONVEYANCE *on* SALE *of* FREEHOLDS *by a* COMPANY *in* VOLUNTARY LIQUIDATION (*a*).

Parties. *PARTIES*, The —— Co Limited in liquidon (hrinar called the Co), 1; A. of —— & B., of ——, *liquidors of the Co.*, 2; & C., of —— *pchaser*, 3. *Recite convce to Co*, p. 441: *Voluntary winding up of Company*, p. 468, f. **3** *or* f. **4**; *Publication of notice*, p. 469, f. **5**. AND WHAS the sd A. & B. in the name & on the behalf of the Co have agrd,with the sd C. for the sale, & transfer to him of the fee simple of the ppty hby assured free from incumbce for the sum of £——. NOW THIS DEED WITNESSETH that in psuance, &c., & in conson of the sum of £——, now to the sd A. & B. pd by the sd C., the receipt whrof the sd A. & B. & the Co do hby acknowe they the Co (acting by the sd A. & B.) hby grt & the sd A. & B. as trees hby grant & confirm unto the sd C., *Parcels*, p. 480, *habendum to C., in fee simple*, p. 500. [*Statement as to value*, p. 525.] IN WITNESS, &c.

Witnesseth (*b*).

Company dissolved. (*a*) As to the determination of a lease vested in a company which is wound up, see *Hastings Corpn.* v. *Letton*, [1908] 1 K. B 378. Under the L. P. Act, 1925, s. 181, the court has power to create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate. As to the position of the liquidators, see the Companies C. Act, 1908, ss. 149—159; *Knowles* v. *Scott*, [1891] 1 Ch. 717; *Silkstone, &c., Co.* v. *Edey*, [1900] 1 Ch. 167; *Pulsford* v. *Devenish*, [1903] 2 Ch. 625; and see further as to sales by liquidators, *ante*, p. 421, note (*c*); Williams, V. & P., 3rd ed., pp. 936 *et seq.* The legal estate remains in the Company notwithstanding liquidation: *Re Oriental Inland Steam Co.*, L. R. 9 Ch. at p. 560. As to unregistered companies, see the Companies C. Act, 1908, s. 267; *Re Ebsworth & Tidy*, 42 Ch. D. at p. 49. The purchaser is entitled to a covenant by the liquidators against incumbrances.

(*b*) See Palmer, 11th ed., pt. 2, p. 864.

LXXI.

ASSIGNMENT *of* CHARGE *in respect of* REDEEMED LAND TAX (*c*).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. WHAS by a certfe bearg date, &c., under the respective hands & seals of two of the Commrs appted for the pposes of the Land Tax Redemption Act, 1802, the sd Commrs certified that they had agrd with X. for the redmon by him of £—— land tax, being the land tax charged upon a messe, &c., assessed in the land tax assessmt of the sd parish as thrin mentd (wch premes were held by the sd X. as benefl lessee for a certain term of yrs thrin) & the conson for such pchase was stated by an endorsemt on the sd certfe to be the sum of £——: AND WHAS the sd sum of £—— was duly pd by the sd X. in psuance of the sd contract as appears by the certfe of the Deputy Receiver-General of the county of —— endorsed on the sd certfe, & the sd certfe was duly registered psuant to the dirons of the sd Act, & the sd premes thrupon became wholly freed & exonerated from the land tax & chargable with the sum of £—— (being the amt of the moys pd by the sd X. as the conson for the redmon of the sd land tax) & with the paymt of the yrly sum of £—— (being the amt of the land tax redeemed) by way of intt thron for the benefit of the sd X., *Recite devolution of charge in respt of redeemed land tax to A.*; AND WHAS the sd A. has agrd with the sd B. for the absolute sale to him of the sd sum of £—— chargable on the sd messe

Recitals.

Certificate of redemption.

Agreement.

(*c*) The redemption of the land tax in the case in the text was effected under the Land Tax Redemption Act, 1802. Now it is effected under the Land Tax Redemption Act, 1813; see Bourdin on Land Tax, 2nd ed. 82; or under the Fin. Act, 1896, s. 32. A notice that registered land is free from land tax can be entered on the register: Rule 194. Land tax is not properly an incumbrance on land: see Williams, V. & P., 3rd ed., 164.

As to the redemption of land tax.

The charge must be registered under the Land Charges Act, 1925, ss. 10 & 13, if created on redemption after that Act, upon such redemption, and if prior thereto, then within one year after the first assignment *inter vivos*: see also the Fin. Act, 1896, s. 33.

As to the application of the Statutes of Limitation to such a charge, see *Skene* v. *Cook*, [1902] 1 K. B. 682. See further as to land tax redemption contracts, *ante*, p. 345, note (*d*).

& premes togr with the sd yrly sum of £——, payable by way of intt thron as afsd & all benefit under the recited contract for the sum of £——: NOW THIS DEED WITNESSETH that in psuance, &c., & in conson, &c. (the receipt, &c.), the sd A., as benefl owner, hby grts & assns unto the sd B. ALL THAT the sd sum of £—— with wch the sd messe & premes became chargable for the benefit of the sd X., as hrinbfe is recited & also the sd yrly sum of £—— payable by way of intt for the sd sum of £—— as afsd & all future paymts throf togr with the recited contract for redmon of the sd land tax & the full benefit throf To hold the same unto the sd B. absolutely. [*Statement as to value*, p. 525.] IN WITNESS, &c.

Assignment.

NOTE ON THE STAMPS ON THE SALE OF A BUSINESS AS A GOING CONCERN.

Method of carrying out the sale.

On the sale of a business as a going concern, either to a company formed for the purpose or to an ordinary person, the contract for sale and the conveyances should be framed so as to avoid unnecessary duties. The sale is usually carried out by a general contract for sale followed by conveyances or a general conveyance of such parts of the property sold as require conveyance.

Stamp on contract.

By the Revenue Act, 1889, s. 15, repealed and re-enacted by the Stamp Act, 1891, s. 59 (see Alpe, 16th ed., 131), the *ad valorem* stamp is charged on the contract, whether made in Great Britain or not (see Rev. Act, 1909, s. 7), on the price of all the subject matters (see *Brooke & Co., Ltd.* v. *I. R. Commrs.*, [1896] 2 Q. B. 356) except:

(i.) Legal interests in lands, tenements and hereditaments;

(ii.) Legal interests in property situate out of the United Kingdom (see *I. R. Commrs.* v. *Muller & Co., Ltd.*, [1901] A. C. 217; *Danubian Sugar Factories Ltd.* v. *I. R. Commrs.*, [1901] 1 Q. B. 245);

(iii.) Legal interests in goods, wares and merchandise;

(iv.) Legal interests in stock or marketable securities;

(v.) Any ship or vessel, or part interest, share or property therein.

Ad valorem on conveyances.

The contract must be stamped with the 6*d.* or 10*s.* stamp, as the case may be, in respect of the excepted items, and if any of the excepted items are afterwards conveyed, *ad valorem* duty, if any, must be paid on the conveyances.

Classification of items.

In order to avoid payment of unnecessary or even double duties, the items to be sold should be classified and the purchase money apportioned in respect of each, in view of the subsequent conveyances. It is generally desirable that the classification and apportionment should be elaborate, but as the contract is intended to be completed as a whole, it is impossible to have separate contracts in respect of each item. It should be observed that where any part of the subject matter of the contract, such as movable chattels, can be transferred without conveyance, it is not strictly correct to state one price for all the items in the contract, and then to apportion part of it to those items which can be transferred without conveyance, as the Stamp Act, 1891, s. 58 (1), only authorises apportionment where all the items are conveyed: see Palmer, 11th ed., pt. 1, p. 359.

Negotiable instruments.

(vi.) A contract for the sale of negotiable instruments does not require an *ad valorem* stamp. The transfers themselves (which will be made by delivery, or delivery and endorsement as the case may require) require no stamp.

Cash in hand.

(vii.) Sometimes cash in hand is included in the contract. It is not a chose in action and there is no reason for thinking that any *ad valorem* duty is payable on the contract in respect of it. The consideration should be its amount. The cash itself will be handed over on completion.

The items may conveniently be classed under the seven foregoing heads, being items in respect of which the contract requires no *ad valorem* stamp, and the following heads, in respect of which the contract requires an *ad valorem* stamp :

(viii.) Equitable interests in land, whether situate in or out of the United Kingdom, with the fixtures thereon.

(ix.) Goodwill, including trade marks.

(x.) Pending contracts and other choses in action.

(xi.) Cash at the bank.

Denoting duty on conveyance.

In cases where *ad valorem* duty has been paid on the contract, the Commissioners have to denote the payment of the duty on the conveyance, or to transfer the duty thereto on production of the contract duly stamped : Stamp Act, 1891, s. 59 (3). It follows, therefore, that whether all the items in respect of which *ad valorem* has to be paid on the contract are to be conveyed by the same instrument or not, the purchase money for them may, as heretofore, be a lump sum or apportioned in respect of the different items. In either case the consideration will be apportioned by the Commissioners for the purposes of part I. of the Fin. (1909–10) Act, 1910, in such manner as they determine : s. 32 (3).

The following remarks as to the foregoing items should be attended to :

Legal estates in land.

1. A lump sum may be stated in the contract as the price of all land the legal estate in which is sold, which may afterwards be apportioned for the purpose of the several conveyances. Fixed plant and machinery pass together with the land both in the contract and conveyance, and therefore ought to be included in the valuation of the land to which they are affixed. It appears (Alpe, 16th ed., 137) that where a separate price is put on the fixtures, an *ad valorem* stamp in respect of such price is in practice charged on the conveyance or contract according as the title is legal or equitable. This duty does not appear to be payable, but to avoid all doubt a separate price ought not to be placed on the fixtures.

Fixtures.

Property out of the United Kingdom.

2. Where the conveyance of a legal interest in property locally situate out of the United Kingdom is executed within the United Kingdom, *ad valorem* duty is payable on the conveyance : *Wright* v. *I. R. Commrs.*, 11 Ex. 458. Duty is payable in respect of a contract for the sale of an equitable interest in land situate out of the United Kingdom (*Farmer* v. *I. R. Commrs.*, [1898] 2 Q. B. 141), but not on a contract for the sale of an option to purchase land situate out of the United Kingdom nor on a contract for the sale of such land with the benefit of the goodwill in the trade carried on thereon : *I. R. Commrs.* v. *Muller & Co., Ltd.*, [1901] A. C. 217. An *ad valorem* stamp must be affixed to a contract for sale of property out of England, where the consideration is the doing of something such as the issue of shares of a company in England : *I. R. Commrs.* v. *Maple & Co.* (*Paris*), *Ltd.*, [1908] A. C. 22. A chose in action is not, as a rule, " locally situate without the United Kingdom " : *Smelting Co. of Australia, Ltd.* v. *I. R. Commrs.*, [1897] 1 Q. B. 175 ; *Danubian Sugar Factories, Ltd.* v. *I. R. Commrs.*, [1901] 1 K. B. 245 ; *Urban* v. *I. R. Commrs.*, 29 T. L. R. 476 ; *Velazquez, Ltd.* v. *I. R. Commrs.*, [1914] 3 K. B. 458 ; and therefore an *ad valorem* stamp must be affixed on the contract for the sale of it ; but goodwill may be property locally situate out of the United Kingdom : see *I. R. Commrs.* v. *Muller & Co., Ltd.*, [1901] A. C. 217.

Movable chattels.

3. The price of goods, wares and merchandise, which include stock in trade, loose plant, movable machinery and other chattels capable of passing by delivery, should be separately stated, and the transfer effected by

delivery, and a receipt taken for the purchase money, on which a *2d.* stamp and no *ad valorem* is payable. If there is a general conveyance containing a number of items it should not contain a recital that the movable goods have been delivered and paid for, for although if the recital is true it does not operate as a conveyance (*Ramsay* v. *Margrett*, [1894] 2 Q. B. 18), in the absence of proof of the truth of the recital it may be held to operate as a conveyance (*Horsfall* v. *Hey*, 2 Ex. 778) and thus to render the deed liable to *ad valorem* duty in respect of purchase money of those chattels; see *post*, p. 669, note (*a*).

Marketable securities.

4. A separate price should be stated for every sum of stock and for every marketable security, as they have to be transferred separately. As to stamps on transfers of marketable securities, see Stamp Act, 1891, ss. 82, 122, and Schedule I., Marketable Security; Fin. Act, 1899, s. 4; Fin. (1909–10) Act, 1910, s. 76; Fin. Act, 1911, s. 13; Fin. Act, 1920, s. 38.

Ships.

5. The price of ships or any interest therein, including freights and bottomry bonds, should be stated separately and is exempt from *ad valorem* duty (Stamp Act, 1891, 1st schedule, General Exemptions from all Stamp Duties, and Alpe, 16th ed., 237, and see Merchant Shipping Act, 1894, s. 721), but this exemption does not extend to shares in ship companies. As to the fees payable on and after the 1st of April, 1899, in respect of the registration, transfer (including transmission) and mortgage of British ships, see Merchant Shipping (Mercantile Marine Fund) Act, 1898, s. 3, and the First Schedule of the Order of the Board of Trade, dated the 20th of February, 1899, and published in the *London Gazette* of February 21st, 1899, p. 1116; and Temperley's Merchant Shipping Acts, 3rd ed., 448.

Equitable interests in land.

6. Equitable interests in land include all interests in land other than such as under the L. P. Act, 1925, s. 1, are capable of subsisting as legal estates or interests.

Goodwill.

7. It is sometimes convenient to state a separate price for goodwill and the registered trade marks, which are only assignable with the goodwill (Trade Marks Act, 1905, s. 22), with a view of satisfying persons who are interested in the price given for them, as for instance the shareholders in the purchasing company.

Choses in action.

8. Book debts, the benefit of pending contracts in relation to the business, covenants relating to the land sold entered into by neighbouring landholders, or relating to trade, or relating to insurances the benefit of which will not pass to the purchaser by the conveyance of the land, and choses in action of every description, should be referred to in the contract. There is no need to state a price for them distinct from that of other matters to be comprised in the general conveyance: *Measures* v. *I. R. Commrs.*, 82 L. T. 689. If the book debts are large, they should not be included in the contract so as to save *ad valorem* duty. If this is done it is common to provide that the purchaser shall collect them for the vendor.

Cash at a bank.

9. Strictly speaking cash at a bank is a chose in action, and unless absolutely necessary should not be mentioned in the contract, but should be excluded from the sale; but in practice, it is believed, *ad valorem* stamp duty is not paid on the contract in respect of this item: see *West London Syndicate* v. *I. R. Commrs.*, [1898] 2 Q. B. 507.

Negotiable instruments and cash on sale to a company.

When the sale is to a private company, the proceeds of the negotiable instruments and the cash at the bank and in hand will be wanted as working capital. There will, however, be no difficulty in excluding the cash in the bank and in hand from the sale, and providing that the vendors should purchase shares to their amount.

Mortgages.

10. The agreement as to the mortgage debts due to the firm should be an agreement for transfer, not for sale. No *ad valorem* will be due on the contract in respect of this agreement. The consideration for each transfer of each mortgage will generally be the amount due on the mortgage, and the transfer will bear *ad valorem* of 6*d.* per cent. on the amount transferred.

LXXII.

ASSIGNMENT *of the* GOODWILL *and* PLANT *of a* BUSINESS *by* PARTNERS, *and of* LEASEHOLDS *vested in one* PARTNER *in* TRUST *for the* FIRM (*a*). COVENANTS *by* VENDORS NOT *to* CARRY ON BUSINESS (*b*), *and by the* PURCHASER *to pay a* SHARE *of the* GROSS RECEIPTS *during a limited time to the* VENDORS.

PARTIES, A., B., & C., *vendors* (hrinar called the vendors), 1 : A., *trustee*, 2 ; D., *pchaser* (hrinar called the pchaser), 3. WHAS the vendors have for some time past carried on the business of —— in the leasehold messe & premes hby assnd under the firm name of A. & Co. AND WHAS the sd leasehd messe & premes which are vested in the sd A. as este owner in respect of the term of yrs grntd by the lease under wch the same are held as shown in the First Schdle hereto form pt of the ptnp ppty of the sd firm although no formal declaron of trust throf has been executed by the sd A. : AND WHAS the vendors are also entitled as further pt of the ptnp ppty of the sd firm to certain fixed machinery, &c. : *continue recital of title to trade plant, book debts, contracts, &c., as at* p. 467, f. **21**, *mutatis mutandis ;* [AND WHAS the vendors are entitled in equity to the sd leasehd premes & ptnp ppty in the shares followg, namely, the sd A. to two eql fourth pts throf, the sd B. to one other eql fourth pt throf & the sd C. to the remaing fourth pt throf] : AND WHAS the vendors have agrd with the pchaser for the sale & transfer to him of the sd leasehd premes & the goodwill of the sd business, togr with the sd fixed machinery, plant, & other fixtures in the nature of tenants' fixtures & the sd book debts, & the benefit of the sd contracts & orders, for the sum of £——, & such share of the gross earngs & receipts in respt of the sd business as is hrinar covted to be pd by the pchaser : AND WHAS the vendors have also agrd

Recitals.
Business.
Title to plant, &c.
Shares in business.
Contract.

(*a*) Where the business premises have been conveyed to the partners or some of them in trust for sale, they should be separately assigned by the trustees by whom the receipt for the purchase money must be given. In the case supposed in the text, the existence of the statutory trust for sale depends upon the truth of the recitals, and the assignment is better taken as above with the concurrence of all the partners.

(*b*) As to covenants of this nature, see *ante*, p. 39, note, and Lindley, 8th ed. 503 *et seq.*, and cases there referred to.

with the pchaser for the sale to him of the sd movable machinery (*c*) & plant, utensils, materials for manufacture, manufactured goods, stk-in-trade, & chattels specified in the second schedle hto, for the sum of £——: AND WHAS it has been also agrd that the assnmt to be executed for the ppose of carrying out the sd sale shl contain the covts & provons hrinar expressed: NOW THIS DEED WITNESSETH as follows:—

Witnesseth.

Assignment of leaseholds.

1. IN PSUANCE, &c., & in conson, &c. (the receipt, &c.), & of the covt by the pchaser hrinar contained, sd A. **as tree** by the direction of the vendors hby assn & the vendors, **as benefl owners**, accordg to the shares & intts to wch they are resply entitled in the sd leasehd premes or the proceeds of sale throf as hrinbfe appearing, & all other (if any) their respective shares or intts thrin, do resply hby assn & confirm unto the pchaser, All & Singular the messe & premes comprised in & demised by the lease mentd in the First Schdle hereto. All wch premes are known by the short descrn throf contd in the fourth column

Sale of movable chattels.

(*c*) Where movable chattels which are transferable by delivery are sold together with property which can only be transferred by a conveyance, separate prices for the chattels and other property should be stated in the preliminary agreement (see *ante*, p. 422), as the Stamp Act, 1891, s. 58 (1), only authorises the consideration for the whole property contracted to be sold to be apportioned where the property is conveyed in separate parts by different instruments. If the purchase is made under the authority of a special Act the conveyance must bear the *ad valorem* stamp for the whole consideration, see the Fin. Act, 1895, s. 12: *Eastbourne Corpn.* v. *Att.-Gen.*, [1904] A. C. 155; and see as to the meaning of the words "vested by way of sale" in that section: *Att.-Gen.* v. *Felixstowe Gas Light Co.*, [1907] 2 K. B. 984.

Stamps on sale of chattels.

If the chattels are actually conveyed by deed, *ad valorem* duty on their price is payable; but if the deed only contains a contract for their sale, this *ad valorem* duty is not payable: Stamp Act, 1891, s. 59 (1). Where the contract, and probably where, as in the text, a recital of the contract is contained in a deed conveying other property, a 10*s.* stamp appears to be required in addition to the *ad valorem* stamp in respect of the other property; *ib.*, s. 4. In either case the deed is a bill of sale within the meaning of the Bills of Sale Act, 1878; but if possession of the chattels is taken immediately after the execution of the deed this appears to be immaterial. If the chattels have been actually delivered and the purchase-money paid, a recital to that effect will not render the deed liable to duty: *Ramsay* v. *Margrett*, [1894] 2 Q. B. 18; *French* v. *Gething*, [1922] 1 K. B. 236; but it is better to recite the delivery of the movable plant, &c., and the purchase-money for the same as intended to be made and paid, in order to avoid the necessity of proving the truth of the recital.

Stamp where purchase money is

As to the stamp on a contract for the sale of goods for a sum payable by instalments, see *County of Durham, &c., Co.* v. *I. R. Commrs.*, [1909] 2 K. B. 604. See further as to stamps, *ante*, pp. 665 *et seq.*

of the same schdle; *Habendum to D.*, p. 504, but freed & discharged from the statutory trust for sale (if any) affectg the same:

2. In further psuance, &c., & for the conson afsd, the vendors, as benefl owners, accordg to the shares & intts to wch they are resply entitled as hrinbfe appears, & all other (if any) their respective shares or intts thrin, do resply hby assn unto the pchaser, First, All the goodwill, &c., p. 491, f. **9** (*d*); Secondly, All the fixed machinery, &c., p. 492, f. **11**; Thirdly, All the book debts (*e*) (*f*), &c., p. 491, f. **10**; *Power of attorney*, p. 524, f. **19**, *mutatis mutandis*. To hold the same Unto the pchaser, absolutely: Assignment of goodwill, &c.

3. *Covenant by the pchaser with the vendors*, that he, the pchaser, will carry on (*g*) the business of —— in the sd messe & premes first hrinbfe assned for & during the term of —— yrs from the date of these psnts, if he, the pchaser, & either of them, the vendors, shl so long live, & further will pay to the vendors, or the survor of them, for & in respt of each of the successive yrs ending on the —— day of ——, of the sd term of —— yrs, if the pchaser, & also the vendors, or one of them, shl be living at the end of Covenant by C. to pay share of gross receipts (*h*).

(*d*) As to the sale of the goodwill, see *ante*, p. 419, note (*b*). payable by instalments.

Goodwill is "property" for fiscal purposes (*Potter* v. *I. R. Commrs.*, *&c.*, 10 Ex. 147); and not being "goods" within the exception in the Stamp Act, 1891 (but as to a hire purchase agreement, see Fin. Act, 1907, s. 7), the assignment thereof (if there is no preliminary contract so stamped) is chargeable with *ad valorem* duty as a conveyance; and if the purchaser takes upon himself and indemnifies the vendor against the debts, additional duty would be payable on the amount of the debts as part of the consideration under s. 57 of the Act of 1891. A mere contract for the sale of a goodwill on certain conditions precedent being fulfilled was not chargeable as a transfer (*I. R. Commrs.* v. *Angus*, 23 Q. B. D. 579); but now, if there is a preliminary contract, the *ad valorem* duty is, under s. 59 of the Act of 1891, imposed on the contract: see further, *ante*, p. 421, note (*b*). As to stamp duty on sale of goodwill.

(*e*) As to the assignment of book debts, see *ante*, p. 422, notes (*a*) and (*c*), Notice of the assignment must be given to the debtors, see *Rutter* v. *Everett*, [1895] 2 Ch. 872; *Re Neal*, [1914] 2 K. B. 910; and see Vol. II., p. 69, note (*b*).

(*f*) As to the assignment of contracts, see *Tolhurst* v. *Associated Portland. &c., Ltd.*, [1903] A. C. 414; *Kemp* v. *Baerselman*, [1906] 2 K. B. 604; *Cooper* v. *Micklefield Coal, &c., Co.*, 56 Sol. J. 706; notes to *Lampleigh* v. *Brathwait*, 1 Smith L. C., 11th ed., at p. 145.

(*g*) See *McIntyre* v. *Belcher*, 14 C. B. (N. S.) 654; *Telegraph Despatch, &c., Co.* v. *McLean*, L. R. 8 Ch. 658.

(*h*) See P. Act, 1890, s. 2 (2), (3) (*e*), s. 3. For variations where a share of gross or net profits is to be paid, see *ante*, p. 24, note, which can be adapted.

each respective yr, one eql —— pt of the gross earngs & receipts in respt of the sd business, witht any deduction whatsr except the rent payable under the sd lease such one eql —— pt to be pd on or bfe the —— day of —— next after the end of the yr in respt of wch it shl become due as afsd: PROVD ALWAYS & it is hby agrd & declared that in case the sd gross earngs & receipts in respt of the sd business, witht any deduction save as afsd in any yr of the sd last mentd term, shl be less than the sum of £——, then the pchaser shl not be required to make any paymt in respt of such yr:

Proviso in case of gross receipts falling off.

Covenant not to revoke powers.

4. *Joint & several covenants by the vendors* that they, the vendors, will not, nor will either of them, or the exs or ads of either of them, revoke any of the powers or authorities hrinbfe given to the pchaser, or receive or release any of the debts hby assned, or receive any moy or goods wch may become receivable, under any of the contracts or orders, the benefit whrof is hrinbfe assned, or release any of such contracts or orders: AND FURTHER, that they, the vendors, will not, nor will either of them, nor will the wife or widow of either of them (*k*), at any time or times hrafter [during the term of —— yrs from the date of these psnts], either alone or jointly, or in ptnp with any other pson or psons whomsr, directly or indirectly, either by themselves, himself or herself, or as agents or agent or orwise, carry on, manage, or be concerned, engaged, or interested in the business of ——, within —— miles [measured along the highway] from —— afsd [in any pt of the United Kingdom] [& will not authorise their, his or her name, or the name of the sd firm of ——, to be used in any way for the ppose of any such business in any pt of the United Kingdom by any pson or psons other than the pchaser, his exs, ads, & assns (*l*)]: [AND FURTHER, that the sd B. or C. will, at all reasble times durg the space of —— months from the date of these psnts, in case he shl so long live, at the request & at the expse of the pchaser [accompany him &] introduce him to the customers, agents, ppals, & correspondents of the vendors in

Not to carry on trade (*i*).

To introduce purchaser to customers.

(*i*) See *ante*, pp. 39 *et seq.*

(*k*) See *Smith* v. *Hancock*, [1894] 2 Ch. 377; *Cory* v. *Harrison*, [1906] A. C. 274.

(*l*) As to the right of the purchaser to use the vendor's name, see *ante*, p. 419, note.

their sd business, & use his utmost reasonable endeavours to secure to the pchaser the full benefit & advantage of the connection of them, the vendors, in the sd business] : [PROVD ALWAYS that neither the sd B. nor the sd C. shl be bound to go more than —— miles from —— afsd, or to attend psonally at the offices of the sd business for the pposes last afsd] : [*If the outstandg book debts are retained by the vendors the followg clause may be inserted :* PROVD ALWAYS, that the vendors, their exs or ads shl be entitled to use the offices of the business, & to have access thereto, & to the books & accts throf, so long & to such extent as may be necy for gettg in the outstandg book debts due & owg to them, & for windg up their business genlly :]

Vendors to have access to books.

5. *Covenant by the pchaser with the vendors* that the pchaser, his exs or ads, will at all times keep the vendors, & each of them, & their respective exs & ads, indemnified in respt of the sd contracts or orders, the benefit whrof is hby assned, & against all proceedings, costs, damages, claims, demands, & liability by reason of the non-pformce or non-execution of the sd sevl contracts or orders :

Purchaser to indemnify vendors against breaches of contract.

6. THE PCHASER hby binds himself to the vendors resply in the sum of £ —— as ascertained & liquidated damages that, in carrying on the sd business, the pchaser, his exs or ads, or his firm or his or their assns, will not trade in or make use of the names of the vendors or any of them, or the name of their sd firm, or let any of such names appear on any invoice, labels, or trade-marks, or in any other way connected with the sd business : PRVD ALWAYS that the pchaser, his exs or ads, shl be at liberty at all times hrafter & for all pposes connected with the sd business, to use & employ after his or their own name or names the words " succors to ——," [& for the period of twelve calr months from the date hereof to retain the name of the sd firm of —— on the labels as the same now appears.] IN WITNESS, &c. (*m*).

Covenant not to use names of vendors.

[*The Schdles.*]

(*m*) For the protection of the purchaser, notice of the transfer should be given to the parties to the contracts and orders, and to the debtors whose debts are assigned.

LXXIII.

CONVEYANCE *on* SALE *by* ONE *of* TWO JOINT TENANTS *or* TENANTS *in* COMMON *to the* OTHER, *of his* SHARE *in the* PROCEEDS *of* SALE *of* FREEHOLDS (*a*).

PARTIES; A., *vendor;* B., *purchaser; recite old will of X. appointing A. & B. exors & devising to them his real estate in trust for his wife for life & after her death for A. & B. as joint tenants or tenants in common;* p. 456, f. **1**, *saying,* " UPON TRUST to pay the rents & profits throf to his wife Y. & after her death IN TRUST for the sd A. & B. as joint tenants *or* " as tenants in common " in equal shares; *death of testator & probate,* p. 457, f. **3**; AND WHAS the sd Y. died on the —— day of —— AND WHAS by the effect of section 36 *or* " the transitional provisions " of the Law of Property Act, 1925, the sd devised ppty has become vested in the sd A. & B. as joint tenants upon trust to sell the same & to stand possed of the proceeds to arise from any such sale & of the rents & profits thof until sale upon trust for themselves as joint tenants *or* " tenants in common " in equal shares; AND WHAS the sd A. has agreed with the sd B. for the sale & transfer to him of his share & intt of & in the sd ppty & the proceeds of sale throf for the sum of £ —— AND WHAS upon the treaty for the sd sale it was agreed that the sd devised ppty shd be conveyed in mner hrinar appearing. NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson of the sum of £—— now paid by the sd B. to the sd A. (the receipt whof the sd A. hby acknowes) the sd A. & B. **as trees** & by the diron of the sd B. hby convey & the sd A. **as benefl owner** as to the share & intt to wch he is entitled in equity in the ppty hby assured hby conveys & confirms unto

(*a*) See L. P. Act, 1925, ss. 34–36, and First Schedule, Part IV. See also Preliminary Note, *ante,* p. 434. Upon a sale by one of two joint tenants to the other, of his interest in the proceeds of sale of the land, the conveyance of the legal estate (1 Shep. Touch. 205) and also of the equitable interest (L. P. Act, 1925, s. 36 (2)), may be in the form of a release from one to the other. Inasmuch, however, as the transaction involves as well a conveyance of the legal estate discharged from the statutory trust for sale, as also an assignment of the equitable interest necessitating a recital of the equitable title, it seems preferable to frame the conveyance in the same manner as it should be framed in the case of the assignment by the tenant in common to the other.

the sd B.; *parcels*, p. 480; *Habendum* unto the sd B. in fee simple freed & discharged from the sd trust for sale. [*Statement as to value*, p. 525.] IN WITNESS, &c.

LXXIV.

ASSIGNMENT *by* ONE *of* SEVERAL TENANTS *in* COMMON *to* ANOTHER *of his* SHARE *in the* PROCEEDS *of* SALE *of* FREEHOLDS (*a*).

PARTIES, A., *vendor*, 1; B., *purchaser*, 2; *recite old will of X. appointing G. & H. exors & trees & devising to them his real este upon trust for his wife for life & after her death in trust for sale & division of the proceeds among such of his chldn living at his death as being sons shd attain the age of 21 yrs or being daughters marry under that age as in last Prec., mutatis mutandis. Recite death & probate of testor; death of wife* AND WHAS the sd testor had five chldn & no more, namely the sd A. & B. who attained their rspve ages of 21 years on the —— day of —— & the —— day of —— resply; D. now the wife of L. to whom she was married on the —— day of ——; E. who died on the —— day of —— under the age of 21 yrs & unmarried; & F. now an infant of the age of —— yrs AND WHAS the sd A. has agrd with the sd B. for the sale to him of all the share & intt to wch he is now or may hrafter become entitled under the recited will of the sd X. deced of & in the sd devised ppty & the proceeds of sale throf for the sum of £—— NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson of the sum of £—— now paid to the sd A. by the sd B. (the receipt of wch sum the sd A. hby acknowes) the sd A. as benefl owner hby assns unto the sd B. all the share & intt to wch the sd A. is now entitled under or by virtue of the sd will of the sd X. deced & all other if any the share & intt to wch he may hrafter become entitled under the same will by accruer in the event of the death of the sd F. under the age of 21 yrs of or in the proceeds to arise from the sale & the rents & profits until sale of the ppty described in the schdle hereto TO HOLD the same unto the sd B. absolutely; [*statement as to value*, p. 525]. IN WITNESS, &c.

Schdle.

(*a*) This assignment operates in equity only.

LXXV.

ASSIGNMENT *of* DEBT *secured by* DEED *of* COVENANT (*a*).

Recitals. That debt is owing. Agreement.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. WHAS by a deed of covt dated, *&c.*, & made, *&c.*, the sd X. covtd with the sd A. to pay to him the ppal sum of £—— on the —— day of —— with intt thron in the meantime at the rate of £—— p.c. p.a. payable on the —— day of —— and the —— day of —— in every yr *or as the case may be, noticing any special security created by the deed of covt*; AND WHAS the sd ppal sum of £——, togr with intt thron as from the —— day of —— now last past remains due to the sd A. on the secy of the sd deed of covt; AND WHAS the sd A. has agrd with the sd B. to sell to him for the sum of £—— the sd ppal sum of £——, & the intt now due & all intt henceforth to become due thron & the benefit of the sd security for the same: NOW THIS DEED WITNESSETH, *conson* (the receipt, &c.), the sd A., as benefl owner, hby assns unto the sd B., ALL THAT, the sd sum of £—— owing on the secy of the sd deed of covt & the intt due & to accrue due thron & the full benefit of the sd deed of covt (*b*), TO HOLD the same UNTO the sd B. absolutely. [*Statement as to value*, p. 525.] IN WITNESS, &c.

Witnesseth. Assignment of deed. Habendum.

LXXVI.

ASSIGNMENT *of a* POLICY OF LIFE ASSURANCE (*c*).

Assignment.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2: WITNESSETH that in conson of the sum of £——, now pd by the sd B. to the sd A. for the pchase of the policy & moys hby assned (the receipt, &c.), the sd A., as benefl owner, hby assns unto the sd B.,

(*a*) If the debt was guaranteed by a surety the assignment will not release the surety: *Bradford Old Bank* v. *Sutcliffe*, [1918] 2 K. B. 833.

(*b*) As to the omission of the power of attorney from an absolute assignment of a chose in action, see Vol. II., p. 69. Enquiry should be made before completion from the debtor as to the state of accounts between him and the vendor, and whether he has notice of any charges of assignment, and after completion notice of the assignment must be given ao the debtor. See Vol. II., p. 320.

(*c*) As to the law of policies, see Goodeve, P. P., 5th ed, pp. 146 *et seq.*

Parcels, p. 490, To HOLD the same UNTO the sd B. absolutely; [*Covts by A. with B. not to vitiate policy, to pay increased premiums if required, & to give certain notices*, pp. 520, 521 (*d*).] [*Statement as to value*, p. 525.] IN WITNESS, &c.

LXXVII.

ASSIGNMENT *of* LEGACY CHARGED *on* REAL ESTATE *on the* PURCHASE *thereof by the* TENANT *for* LIFE, *so as to* KEEP *the* CHARGE ALIVE *for his benefit*, ONE *of the* LEGATEES *being a* MARRIED WOMAN (*a*).

PARTIES, A. " & B., his wife, formerly C., spinster," & D., *legatees*, 1; E., *tenant for life*, 2. *Recital of will charging real este with legacy of £—— & intt to be raised by sale or mtge, & subjt thereto, devisg este to E. for life with remrs over; Death of testor & probate*, p. 457; *Vesting instrument in favour of E. subject to the charge; recital that the legacy had become raisable, & was vested in B. & D. in eql shares; Paymt of legacy or succon duty or of este duty under the Finance Act*, 1894 (*b*); Recitals.

(*d*) The insertion of these covenants depends on the arrangements between the parties. In practice, the two first of such covenants, or some modification thereof, are generally inserted. A written notice of the assignment must be given to the Assurance Company, at their principal place of business, pursuant to the Policies of Assurance Act, 1867, s. 3. Notice.

The statutory notice, however, does not give priority over a previous incumbrance of which the assignee has actual or constructive notice, but of which no statutory notice has been given to the office: see *Newman* v. *Newman*, 28 Ch. D. 674; *Re Weniger*, [1910] 2 Ch. 291.

As to the necessity for stamping the assignment, see the Stamp Act, 1891, s. 118, which makes it expedient to stamp the deed immediately: see 33 Sol. J. 3. Stamps.

(*a*) If the married woman was married or her title accrued since 1882 (see *ante*, p. 606, note (*a*)), the concurrence of her husband will be unnecessary: see *Franks* v. *Bollans*, L. R. 3 Ch. 717; *Michelmore* v. *Mudge*, 2 Giff. 183; *Williams* v. *Cooke*, 4 Giff. 343; *Miller* v. *Collins*, [1896] 1 Ch. 573; see Carson, 2nd ed., 318. In any case her implied covenants bind her separate estate, see *ante*, p. 508. A separate acknowledgment by a married woman is no longer necessary: see L. P. Act, 1925, s. 167. Acknowledgment.

(*b*) If the testator died before 1st July, 1888, legacy duty will be payable; if on or after that day, succession duty: see Customs, &c., Act, 1888, s. 21 (2). If the testator died after May, 1889, and before 2nd August, 1894, Goschen's estate duty may also be chargeable under the Customs, &c., Act,

Interest paid. AND WHAS all intt wch has accrued due upon the sd legacy of £—— up to the date of this deed has been pd & satisfied;

Contract. AND WHAS the sd pties hto of the first pt are desirous of havg the sd legacy raised for their benefit accordg to the provons of the sd will, & the sd E. has agrd with them for the pchase of the sd legacy, & of the intt henceforth to become due thron, for the sum of £——, to the intent that the sd legacy may become pt of his psonal este, & exist as a distinct charge on the sd ppty charged therewith: NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson of the sum of £——, now pd by the sd E. to the sd A. & B., his wife, & of the like sum of £—— pd by the sd E. to the sd D. (the receipt, &c.), the sd A. & B. as benefl owners of one moiety of the ppty hby assned do resply hby assn, & the sd D. as benefl owner of the other moiety throf, hby assns unto the sd E., ALL THAT the sd legacy or sum of £—— by the sd will of the sd —— charged on the sd este & ppty situate at, &c., as afsd, & all intt henceforth to become due for the same, & the full benefit of the sd trust for the raisg & paymt throf, & of all powers & remedies for the recovery throf: TO HOLD the same UNTO the sd E.; AND the sd E. hby declares that the sd legacy or sum of £—— shl not merge in the freehd or inheritance of the sd ppty charged therewith as afsd, but shl exist separately as pt of the psonal este of the sd E. [*Statement as to value*, p. 525.] IN WITNESS, &c. (*d*).

Wit-nesseth.

Assign-ment.

Parcels.

Haben-dum.

Declara-tion that legacy shall not merge (*c*).

1889, s. 6. If the legatee was a child or issue of the testator, and estate duty became payable under the Fin. Act, 1894, succession duty will also be payable, if the testator died on or after the 30th April, 1909, under s. 58 of the Fin. (1909–10) Act, 1910, unless remitted by that section or by the Death Duties (Killed in War) Act, 1914, or amending Acts. As the legacy is charged on the land, it must bear its proportionate share of estate duty: *Re Spencer Cooper*, [1908] 1 Ch. 130.

(*c*) See s. 116 of the L. P. Act, 1925. The word "mortgage" in that section includes a charge: s. 205 (1) (xvi.).

(*d*) Notice of the assignment should be given to the trustees of the will.

LXXVIII.

ASSIGNMENT *of the* CONTINGENT REVERSION *of a* STOCK LEGACY *to a* PURCHASER (*a*). COVENANTS *as to* ASSURANCE *on* VENDOR'S LIFE, *and by* PURCHASER *to pay* DUTY. VARIATIONS *where the* FUND *is in* COURT.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2. WHAS under the will of X., deced, dated, &c., & provd, &c., the sd A. is entitled, contingently on his survivg M., of, &c., & subjt to the life intt of the sd M. thrin, to the sum of £—— 2½ p.c. Consolidated Stk, now standg in the names of P. & Q., the trees of the sd will, wch has been appropriated to answer a legacy of £—— thereby bequeathed [*If the fund is in Court say*, "now standg in Court to the credit of, *state the account*, representg a legacy," &c.] (*b*); Recitals. Title.

(*a*) As to sales of reversions, see *post*, p. 684, note (*a*).

Legacy duty payable on a reversion falling into possession is, in the absence of contract, payable by the assign: *Re Repington*, [1904] 1 Ch. 811. Legacy duty.

As to the duty on settled legacies, see the Legacy Duty Act, 1796, s. 12, on chattels not yielding income, s. 14, and on contingent legacies, s. 17: *Re Duppa*, [1912] 2 Ch. 445. When legacies are payable out of a mixed fund, no matter whether conversion be ordered or not, so much of the legacy as is attributable to the real estate is chargeable with estate duty: *Re Spencer Cooper*, [1908] 1 Ch. 130; unless the testator directs otherwise: *Re Palmer*, 106 L. T 319.

As to estate duty on reversionary interests in personal property, see *ante*, pp. 90, 91, note. Estate duty.

A purchaser of a reversion must in all cases consider whether any estate duty has become payable at the date of his purchase. If this is the case he must not be satisfied with a receipt for it, but must require the production of a certificate of discharge under the Fin. Act, 1894, s. 11, which by sub-s. (4) exonerates a purchaser for value without notice. The certificate of discharge from all death duties which may be granted under s. 16 (7) of the L. P. Act, 1925, only operates to discharge land from such duties. If duty will be payable on the falling in of the reversion, it must be remembered that it is impossible to know at what rate the duty will be charged, as the property has to be aggregated with the other property passing on the death of the deceased except in the case mentioned in the Fin. Act, 1894, s. 4, as amended by Fin. Act, 1900, s. 12, and Fin. Act, 1907, s. 16: see *Att.-Gen.* v. *Thynne*, [1914] 1 K. B. 351.

(*b*) See *Re Williams S. E.*, [1910] 2 Ch. 481. If there has been a previous assignment, and a stop order has been obtained, as to which see Seton, 7th ed. 483, 486; R. S. C., O. 46, r. 4, add, "AND WHAS by an order made in the sd action *or* "matter," on the applicon of —— on the —— day of ——, it was ordered that no pt of the sd sum of £—— Stk shd be sold, transferred or dealt with witht notice to the sd ——." If the fund is not in Court notice of the assignment must be given to the trustees of the will.

Contract. AND WHAS the sd B. has contracted with the sd A., for the absolute pchase of the reversion of the sd sum of £—— Stk to wch the sd A. is entitled, subjt to the life intt of the sd M. thrin, & contingently on his survivg her as afsd, & subjt to the duties (if any) wch will become payable thron in that event, for the sum of £——; AND WHAS upon the treaty for the sd pchase it was agrd that this deed shd contain such

Witnesseth. covts & provons as are hrinar expressed; NOW THIS DEED WITNESSETH that in psuance of the sd agrmt, & in conson,

Assignment. &c. (the receipt, &c.), the sd A., **as benefl owner**, hby assns unto the sd B., ALL THAT the sd sum of £—— Stk, to wch under the sd will of the sd X. the sd A. is entitled in reversion expectant upon the death of the sd M., & contingently on

Parcels. his survivg her, as hrinbfe mentd: AND ALL & every the stks, funds, secs, moys, & ppty wch by means of any sale or change of investmt or orwise may from time to time represent the sd sum of £—— Stk, or any pt throf; AND ALL the dividends, intt & income of the sd premes subjt to the life intt of the sd M. thrin, & the full benefit of the sd respective premes, & of all powers & remedies for the recovery & obtaing paymt & transfer

Habendum. throf; TO HOLD the same UNTO the sd B. absolutely, SUBJT to

Subject to death duties. the duties (if any) to become payable upon the death of the sd M. in respt of the sd reversionary intt of the sd A. in the event of his survivg her; *Covenants by A. with B.*, that the sd A.,

Covenants by A. to give notice of death, &c., of M. his exs, or ads will as often as the sd M. shl remove or change her place of abode, or in case of the death of the sd M., forthwith give notice throf in writg to the sd B., or his succors in title: *to enable B. to insure A.'s life*, p. 520: *to give certain notices*, p. 521: *If the fund is in Court, add*, AND THE ad A. hby empowers the sd B., or his succors in title, at his or their

Power to obtain stop order. own cost, to apply for & obtain an order in the sd cause, *or*, "matter," [discharging the recited order of the —— day of ——, *the existg stop order, if any*, & in lieu throf to apply for & obtain an order] that no pt of the sd sum of £—— Stk shl be sold, transferred, or dealt with witht notice to the sd B., & upon such applicon to use the name of the sd A. as consentg to the same & to instruct solors & counsel accordgly on his

Covenant by purchasers to pay duties. behalf: And the sd B. hby covts with the sd A. that he, the sd B., will when & as soon as any duty or duties shall become payable in respect of the premes hby assnd upon the death of

the sd M. pay & discharge to same & will at all times (*continue as in* f. **4**, p. 518). [*Statement as to value*, p. 525.] IN WITNESS, &c.

LXXIX.

ASSIGNMENT *of a* REVERSIONARY INTEREST *in* PERSONALTY *where* INCUMBRANCES *are* DISCHARGED *out of the* PURCHASE-MONEY *and* ADVANCES *have to be brought into account by one or more* BENEFICIARIES.

PARTIES, A., of, &c. (hrinar called the vendor), 1; & B., of, &c. (hrinar called the pchaser) 2. *Recitals showing vendor's title under a specified settlemt to an aliquot share of the funds in the first part of the first Schedule in reversion expectant on the death of* K., *and that on distribution the advances specified in the second part of that Schedule have to be brought into account by the advanced beneficiaries.* AND WHAS the afsd reversionary intt of the vendor under the settlemt is subjt to the incumbces specified in the second schdle hto (hrinar referred to as the scheduled incumbces), but is orwise free from incumbces. AND WHAS the vendor has agrd with the pchaser for the absolute sale to the pchaser at the price of £—— of all the afsd reversionary intt of the vendor free from all incumbces. AND WHAS there now remains owing on the secy of the scheduled incumbces resply for ppal & intt & costs the various sums set out in the second schdle hto & no more & such sums togr amt to the total sum of £——. AND WHAS it has been agrd that the sd sum of £—— shl be discharged out of the sd pchase-moy, & that the sd mtge debts shl be kept on foot for the benefit of the pchaser in mner hrinar appearing. NOW THIS DEED WITNESSETH as follows:—

Recitals.

Agreement for sale.

1. IN PSUANCE of the sd agrmt & in conson of the sum of £—— on or bfe the execution of these psnts pd by the pchaser at the request of the vendor in mner followg, that is to say, the sum of £—— pt throf in complete discharge & satisfon of the scheduled incumbces & the sum of £—— residue throf to the vendor, the receipt of wch sd sum of

Assignment.

£——, & the payment in mner afsd of wch sd sum of £—— (making togr the total pchase-moy of £——) the vendor hby acknowes, the vendor as benefl owner, hby assns unto the pchaser, *Parcels*, p. 491, f. **7**, *saying*, "share este & intt now remaining of the vendor, &c.," *and referring to* "the ppty specified in the first pt of the first schdle hto." To HOLD the same unto the pchaser absolutely subjt only to the life intt thrin of the sd K. under the settlemt.

Declaration keeping alive incumbrances (*a*).

2. THE PPAL moys, intt, & costs secd by the scheduled incumbces resply shl not, nor shl any pt throf merge in the reversionary intt hrinbfe assned, but the same ppal moys, intt, & costs & every pt throf resply, shl be kept on foot as subsisting charges thron, so as to protect the pchaser, his succors in title against all mesne, incumbces, charges, & estes if any such there be.

[3. *Statement as to value*, p. 525.**]**

IN WITNESS, &c.

The First Schedule above referred to.

Parlars of the investments now subject to the trusts of the deed of settlemt or will in the above written deed referred to as the settlemt & of advances made under the power of advancement in the settlemt.

PART I.

Investments.

(*a*) The incumbrances should be kept alive in favour of the purchaser owing to the risk of the trustees not informing him of all incumbrances notified to them, and also to the risk of an incumbrance being notified after they have answered enquiries and before completion. A mere declaration of intention without any formal assignment is sufficient to keep alive the incumbrances: Dart, 7th ed., 952; Williams, V. & P., 3rd ed., 457; and cf. L. P. Act, 1925, s. 185.

When an equitable incumbrance is paid off by a stranger he becomes entitled to it in equity. It is therefore proper to preserve evidence of payment; and for that purpose, in the present case, each incumbrance should bear an endorsed receipt for the money due, showing if possible what is due for principal, interest, and costs, and stating by whom the money was paid. The receipt should be signed by the incumbrancer, and his signature should be attested.

PART 2.

Advances.

The Second Schedule above referred to.

Parlars of the investments in the above written deed referred to as the scheduled incumbrances.

No.	Date of document.	Parties to document.	Sums due under document at date of discharge thereof for.			
			Principal.	Interest.	Costs.	Total.

LXXX.

SURRENDER *of* EQUITABLE INTEREST *in* FREEHOLDS *by* TENANT FOR LIFE *to* REMAINDERMAN *in fee* (*a*).

PARTIES, A., *tenant for life*, 1; B., *remrman*, 2. *Recitals showing the title of* A., p. 466, f. **17.** AND WHAS under or by virtue of the sd will [settlemt *or* trust instrumt] the sd B. is entitled to the absolute reversionary intt immediately expectant upon the death of the sd A. in the sd ppty. AND WHAS the sd A. has agrd with the sd B. for the sale & surr to him of the life intt of the sd A., in the ppty hby assured for the sum of £——. NOW THIS DEED WITNESSETH, &c., *conson*, Recitals. Contract. Witnesseth.

(*a*) As to the effect of the surrender on the powers of the tenant for life, see S. L. Act, 1925, s. 105, and *ante*, p. 584. If the remainderman is entitled after the execution of the assignment to the fee simple of the land unencumbered by jointures or family charges, he can call upon the trustees to execute a deed of discharge under s. 17 of the last mentioned Act and so put an end to the settlement. Where the existence of any such charges has the effect of keeping the settlement alive, the surrendering tenant for life must convey the fee simple of the settled land to his successor under s. 7 (4).

Succession duty will become payable on the death of A.

As to the effect of the surrender where the remainderman is entitled subject to an executory gift over on his death in the lifetime of the tenant for life, see *Re Attkins*, [1913] 2 Ch. 619.

receipt, the sd A., as benefl owner, hby assigns & surrenders unto the sd B.: All the right & intt of him the sd A. under the hrinbfe recited will [settlemt *or* trust instrumt] during his life in the ppty specified in the Schedule hrto (*b*): To HOLD the same UNTO the sd B. absolutely, for & durg the life of the sd A., to the intent that the intt of the sd A. in the sd premes, may merge & be extinguished in the equitable intt in remainder immediately expectant thron. [*Statement as to value*, p. 525.] IN WITNESS, &c. (*c*).

Habendum.

Schedule.

LXXXI.

CONVEYANCE *of* EQUITABLE REVERSION *in fee of* FREEHOLDS *to a* PURCHASER (*d*).

Recitals. *PARTIES*, A., vendor, 1; B., *pchaser*, 2. WHAS under the will dated, *&c.*, and proved, *&c.*, of L. who died on the —— day

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Purchase of reversion.

(*b*) By s. 104 (4) (*a*) of the S. L. Act, 1925, an assignee of a life interest has the same interest in land or securities for the time being representing land as he had by virtue of the assignment in the land or securities comprised in the interest assigned.

(*c*) Notice of this deed must be given to the trustees: L. P. Act, 1925, s. 137 (2).

(*d*) The form in the text is intended to meet the case of a strict settlement. Where the land was settled on trust for sale, instead of reciting the vesting deed the assurance of the land to the trustees for sale should be recited, and any appointments of new trustees noticed. The parcels should be as in the text with the addition of the words, "or the ppty or investmts for the time being representg the same." On a purchase of a reversion the powers of sale and leasing given by the S. L. Act to the tenant for life or other limited owner, which he cannot assign or release or contract not to exercise (S. L. Act, 1925, s. 104), should be borne in mind. His statutory power of sale overrides any previous sale or mortgage by the reversioner: *Wheelwright* v. *Walker*, 23 Ch. D. 752; *Re Davies & Kent*, [1910] 2 Ch. 35. He may sell for any motive so long as he obtains the best price and there is no corrupt or underhand bargain between him and the purchaser, see *Thomas* v. *Williams*, 24 Ch. D. 558; *Cardigan* v. *Curzon-Howe*, 30 Ch. D. 531; *Chandler* v. *Bradley*, [1897] 1 Ch. 315; *Hurrell* v. *Littlejohn*, [1904] 1 Ch. 689.

Sales of reversions.

As to sale of reversions, see L. P. Act, 1925, s. 174, and cases enumerated in the notes to *Chesterfield* v. *Janssen*, 1 White & T., L. C.; *Aylesford* v. *Morris*, L. R. 8 Ch. 484; *Fry* v. *Lane*, 40, Ch. D. 312; *Brenchley* v. *Higgins*, 83, L. T. 751; and see Withers on Reversions, 161, and 55 Sol. J. 184, 201, 217.

of —— the sd A. is entitled to the equitable reversion in fee simple expectant upon the death of X. *the tenant for life* in the ppty mentd in the Schedule hrto. *Recite vesting deed*, p. 449, f. **34** *or* f. **35**, saying, "the sd ppty": AND WHAS the sd A. has agrd with the sd B. for the sale to him for the sum of £—— of the sd reversion & it has been further agrd that the duties payable in respt of the premes upon the death of the sd X., shl be pd by the sd B., & that he shl enter into the covt in relation thereto hrinar contained: NOW THIS DEED WITNESSETH that, &c., *conson, receipt*, the sd A. as beneficial owner hby grts unto the sd B.: All that the right & intt of him the sd A. under the hrinbfe recited will expectant as afsd in the ppty specified in the Schdle hrto (*e*): TO HOLD the same UNTO the sd B. absolutely, subjt to the life intt of the sd X. in the same premes: *Covenant by B. to pay death duties*, p. 680 (*f*). AND IT IS HBY AGREED AND DECLARED that the sd B. or his assns may at any time or times at his or their cost give such notices, obtain such stop or other orders, make such enquiries, obtain such information & evidence, take such proceedings, & do all such other acts for the ppse of perfectg, provg or upholdg his or their title to all or any pt of the premes hby assured, or ascertaing the parlars of or dealings with all or any pt of such premes, or protectg his or their intt or intts under this deed as the sd B. or his assns may deem necy or expedient, & for all or any such ppses may use the name of the sd A. as an authorisg or consentg party, & also at the cost of the sd B. or his assns may instruct solors to act on his or their behalf accordingly. [*Statement as to value*, p. 525.] IN WITNESS, &c. (*g*).

Contract.

Witnesseth.

Grant.

To purchaser in fee.

Schdle.

(*e*) See *ante*, p. 687, note (*b*).

(*f*) See *ante*, p. 679, note (*a*). If A. is parting with only part of his reversion, it will have to be considered how the duties are to be borne.

(*g*) Notice of this deed should be given to the trustees: L. P. Act, 1925, s. 137 (2)

LXXXII.

RELEASE *of* EQUITABLE REVERSION *in fee of* FREEHOLDS, *expectant on an* ESTATE FOR LIFE, *to the* TENANT FOR LIFE (*a*).

PARTIES, A., *remrman*, 1; B., *tenant for life*, 2. *Recitals as in the last Prec., mutatis mutandis.* NOW THIS DEED

Witnesseth. WITNESSETH, &c., *conson, receipt*, the sd A. **as benefl owner**, hby assns & releases unto the sd B., his este & intt in *Parcels, as in last Prec.:*

Habendum. TO HOLD the same UNTO the sd B. absolutely, to the intent that the life intt of the sd B. may merge & be extinguished in the reversion hby assned; *Covenant by B. to pay death duties*, p. 680 (*b*). [*Statement as to value*, p. 525.] IN WITNESS, &c.

LXXXIII.

STATUTORY ACKNOWLEDGMENT *by a* VENDOR *for* PRODUCTION *of* DEEDS *and* MUNIMENTS *of* TITLE *to a* PURCHASER. VARIATIONS *for several* VENDORS *and for* TRUSTEES *or* MORTGAGEES (*c*).

Recitals. *PARTIES, vendor or vendors*, 1; *pchaser or pchasers*, 2. WHAS by a conveyance bearg even date with & executed bfe this deed, & made betn, &c., in psuance of an agrmt for sale thrin mentd, certain —— & ppty situate in the parish of —— & county of

(*a*) As to the effect of the union of the life estate with the fee on the statutory or other powers of sale, see *ante*, p. 589.

(*b*) See *ante*, p. 679, note (*c*).

As to taking covenant for production by a separate deed. (*c*) See *ante*, p. 513. The covenant for production was often taken by a separate deed, especially where it comprised documents which it might be desirable to keep off the title. But as requisitions as to documents prior to the commencement of the title are now precluded in almost every case by the contract or the L. P. Act, 1925, s. 45 (1), there is seldom any advantage in taking the covenant by a separate instrument, except where it is to be entered into by third parties who cannot be made parties to the conveyance without extra expense; or where the insertion of the covenant in the conveyance would delay the completion of the sale, *e.g.*, where the deeds are delivered to the purchaser of another lot who is to give the covenant. The statutory acknowledgment and undertaking may be by writing not under seal, requiring only a 6*d.* agreement stamp, see *post*, Prec. LXXXV.

——, have been conveyed to the sd, *pchaser or pchasers,* in fee simple [unto the sd, *pchaser or pchasers,* for the residue of a term of —— yrs created by lease dated, &c., & made, &c.] : *Recital introductory to covt for production,* p. 477 ; NOW THIS DEED WITNESSETH that in psuance of the sd agrmt, & in conson of the premes, *statutory acknowmt & undertakg,* p. 515, f. **2** ; [*for trees, or mtgees, statutory acknowmt omittg or qualifying the undertakg*]. IN WITNESS, &c. Witnesseth.

Schdle.

LXXXIV.

STATUTORY ACKNOWLEDGMENT *for* PRODUCTION *where there are* SEVERAL SETS *of* COVENANTING PARTIES, *some of whom are* TRUSTEES.

PARTIES, A., *one covtg party,* 1 ; B. & C., *trees, other covtg pties,* 2 ; D., *pchaser,* 3. *Recite convce of even date to* D., *see last prec. ; Recital introductory to covt,* p. 477 ; NOW THIS DEED WITNESSETH that, in psuance of the sd agrmt & in conson of the premes, &c., *statutory acknowmt & undertakg by A. as to documts in first schdle, & acknowmt* [*& undertakg*] *by B. & C. as to documts in second schdle, see* p. 515, f. **2**. IN WITNESS, &c. Recitals. Witnesseth.

Two Schdles.

LXXXV.

MEMORANDUM *not under* SEAL *of* ACKNOWLEDGMENT *for* PRODUCTION.

I, A., of, &c., havg by a convce dated, &c., conveyed to B., of, &c., certain ppty situate at, &c., do hby acknowe the right of the sd B. to the production & delivery of copies of the documts mentd in the schdle hto (wch are now in my posson & relate as well to the ppty conveyed to the sd B. as afsd as to other ppty belongg to me) & hby undertake with the sd B. for the safe custody of the same documts. Dated this —— day of ——.

Schdle.

CONVEYANCES AS AFFECTED BY THE LAND REGISTRATION ACT, 1925.

PRELIMINARY NOTE.

The L. R. Act, 1925, and the Rules made thereunder contain the new code of law applicable to the registration of title and the dealings with such titles after registration, and go far to eliminate the technical difficulties and objections which were found in practice to exist under the repealed L. T. Acts.

First registration.

Registration of title is compulsory in the City of London, in the several parishes in the County of London, a list of which, with the dates of the orders making registration compulsory, will be found in Brickdale and Stewart-Wallace on Registration of Title, and also in the county borough of Eastbourne. Every conveyance, on sale of land in a compulsory district, and every grant of a term of years absolute not being less than 40 years from the date of the delivery of the grant, and every assignment on sale of leasehold land held for a term of years absolute having not less than 40 years to run from the date of the delivery of the assignment, is on the expiration of two months from the date thereof, or of any extension of that period allowed by the Registrar or Court on appeal from the Registrar, void so far as regards the grant or conveyance of the legal estate in the land comprised therein, or the legal estate in so much of the land as is within the compulsory district, unless the grantee or his successor in title has in the meantime applied to be registered as proprietor of such land: L. R. Act, 1925, s. 123. A purchaser or lessee should therefore apply for registration within the requisite time. Except in the case of a lessee, the application should, generally speaking, be made for registration with an absolute title, and an application on forms 1 or 2 in the Schedule of the L. R. Rules should, together with the documents required by L. R. R. 20–23, be sent to the Registrar. These documents comprise (unless the Registrar otherwise directs) (i) all such original deeds and documents relating to the title as the applicant has in his possession or under his control, including the opinions of counsel, abstracts of title, contracts for or conditions of sale, requisitions, replies, and other like documents in regard to the title, (ii) a copy or sufficient abstract of the latest document of title not being a document of record, (iii) sufficient particulars by plan or otherwise to enable the land to be fully identified on the Ordnance Map or Land Registry General Map, and (iv) a list in triplicate of all documents delivered. Where the application relates to leasehold land, a certified copy of the lease, or, if approved by the Registrar, an abstract or other sufficient evidence of its contents, shall be deposited if the application is made by the original lessee and in other cases if required

by the Registrar. The lease itself should always accompany the application if in the possession or under the control of the applicant. Where it is desired to register a nominee as proprietor his consent in writing, together with a statement that the applicant is not in a fiduciary position in regard to the land, should accompany the application.

No registration with absolute title will be made unless the Registrar approves the title, but if, on examination, he is of opinion that though open to objection the holding under it will not be disturbed, he may approve the title: s. 13. In cases of sale of land in a compulsory district where the value of the land does not exceed £700, or where there has been a sale by or after public auction within two years previous to the application and the value of the land does not exceed £1,000, the Registrar may, if he thinks fit, register a title as absolute or good leasehold on production of a certificate by a solicitor to the effect required by L. R. R. 29.

The effect of registration with an absolute, possessory, or qualified title is set out in ss. 4–7 in the case of freeholds and with an absolute, good leasehold, possessory, or qualified title in ss. 8–12 in the case of leaseholds. A title may be provisionally registered with a possessory title pending investigation: L. R. R. 36; and after first registration a possessory title may be converted into an absolute or good leasehold title: s. 77, L. R. R. 48, 49.

Definitions of land and legal estates.

The word "land" is given a wide definition in s. 3 (viii), and includes mines and minerals whether separated from the surface or not, corporeal hereditaments, and the incorporeal hereditaments in the sub-section mentioned. The expression "legal estates" is defined in s. 3 (xi) as meaning the estates, interests, and charges in or over land subsisting or created at law which are by the L. P. Act, 1925, authorised to subsist or be created at law. L. R. R. 50–55 deal with the registration of incorporeal hereditaments and such corporeal hereditaments as flats, cellars, tunnels, or other underground spaces.

Who may apply for registration.

The persons entitled to apply for first registration of freehold land are the estate owner, including a tenant for life, statutory owner, personal representative, or trustee for sale (but not including a mortgagee where a right of redemption is subsisting) whether the land is subject to incumbrances or not, and any person entitled to require a legal estate subject or not to incumbrances to be vested in him, not being a mortgagee or a person who has merely contracted to buy land: s. 4. The above mentioned persons subject to the same exceptions are entitled to apply for first registration of leasehold land provided they hold under a term of years absolute of which more than 21 years are unexpired.

Settled land.

Settled land must be registered in the name of the tenant for life or statutory owner: s. 86 (1); and the successive or other interests created by or under the settlement (except legal estates which cannot be overridden by the tenant for life in exercise of his statutory powers) take effect as minor interests (defined in s. 3 (xv)) only. These minor interests in the case of settled land may be protected by restriction in any of the forms 9–11 in the Schedule to the L. R. Rules and it is the duty of the trustees of the settlement, or, if there are no trustees, of the Registrar, to give notice of the restrictions to such beneficiaries as the Registrar may direct, and any such person can at his own risk lodge a caution or apply for an inhibition: L. R. R. 56–58. The settlement itself, whether consisting of one or more documents or a copy or abstract thereof, may be filed in the Registry for safe custody and future reference, but though

filed under the title number to which it relates it is not referred to in the title: L. R. R. 59. Notwithstanding a restriction a purchaser may assume a disposition to be authorised by a settlement if the Registrar grant a certificate to that effect, but no such certificate is necessary when the money is paid to the persons entitled to receive it according to the terms of the restriction or into Court: s. 89. Where an existing registered proprietor is a tenant for life he must make a declaration in form 23 in the Schedule of the L. R. Rules and apply for registration of a restriction in form 9 or otherwise as may be required: L. R. R. 100.

Land held in trust for sale.

Land held in trust for sale must be registered in the names of the trustees for sale and where by virtue of any statute land already registered becomes subject to a trust for sale, *e.g.* as in the case of land held in undivided shares under the old law, the trustees for sale, unless already registered, must apply for registration in the prescribed manner, but no fee is charged in respect of such registration or consequential alteration of the register: s. 94. The restriction on the number of trustees imposed by s. 34 (1) and (2) of the T. Act, 1925, apply to registered land: L. R. Act, 1925, s. 95.

Caution against first registration.

A person having or claiming such an interest in land not already registered as entitles him to object to any disposition thereof being made without his consent, may lodge a caution in form 13 of the Schedule of the Rules supported by a statutory declaration in form 14 to the effect that the cautioner is entitled to notice in the prescribed form of any application for registration of an interest in the land affecting the right of the cautioner: s. 53, L. R. R. 64–70.

Priority notice.

Priority for first registration may be reserved by lodging a priority notice in form 17 of the Schedule of the Rules: L. R. R. 71.

Dealings pending first registration.

A person who has a right to apply for registration as first proprietor may deal with the land in any way permitted by the Act before being registered, subject to the conditions which would be applicable if he were in fact the registered proprietor. Subject to the prior rights obtained by actual registration such a dealing has the same effect as if the person making it were the registered proprietor. A dealing other than a lease, however, cannot be accepted for registration until an application has been made for the registration of the estate to which it relates, and if that application is subsequently refused, withdrawn, or abandoned, the registration of such dealing will be annulled: s. 123 (2), L. R. R. 72. Subject to the provisions of s. 123 (1), any such dealing takes effect as if it had taken place after the date of first registration which will be effected as of the date of the application to register: L. R. R. 73 (1).

Where any such dealing pending registration is a charge or other incumbrance capable of registration in the Charges Register of the title affected, the person for the time being entitled to it may lodge an application on behalf of the proper applicant for first registration of the estate on which such charge or incumbrance has been created: L. R. R. 73 (2).

As to the form of the instrument to effect any such dealings, see L. R. R. 81.

Powers of disposition of registered proprietor.

Freeholds.

Under s. 18 a registered proprietor of freeholds may transfer the registered estate in the land or in any part thereof and, subject to any entry on the register to the contrary, may in the prescribed manner transfer or create the following estates:

(i) Transfer in fee simple in possession the mines and minerals apart from the surface or *vice versâ*;

(ii) Grant an annuity or rent-charge in possession either in perpetuity or for a term of years absolute;

(iii) Grant in fee simple in possession any easement, right or privilege in, over, or derived from the registered land or any part thereof;

(iv) Transfer the fee simple in possession of the registered land or any part thereof subject to the creation of any such annuity, rent-charge, easement, right, or privilege mentioned in (ii) and (iii) above;

(v) Grant, subject or not to the reservation of an easement, right, or privilege, a lease of the registered land or any part thereof or of the mines and minerals apart from the surface or *vice versâ*, or of any easement, right, or privilege for a term of years absolute for any purpose but subject to the provisions of the Act and the L. P. Act, 1925, as to mortgage terms.

Leaseholds.

Under s. 21 a registered proprietor of leasehold land has the like powers except that he cannot grant the easements, etc., referred to in (iii).

A lease or underlease, as the case may be, not exceeding 21 years to take effect in possession or within one year from the date thereof at a rent without taking a fine may be granted and take effect notwithstanding that a caution, notice of deposit of a land certificate, restriction, or inhibition (other than a bankruptcy inhibition) may be subsisting, but without prejudice to the interests intended to be protected thereby: s. 18 (3) and s. 21 (3).

The powers conferred by ss. 18 and 21 respectively apply to a registered chargee but subject to the provisions of the Act and the L. P. Act, 1925.

It will be observed that the dispositions which the Act allows a registered proprietor to make all result in the transfer or creation of a legal estate. The legal estates which are thus created are themselves capable of being, and in a compulsory district, must be registered: see as to incorporeal hereditaments s. 2 and L. R. R. 50–55. Leases for terms of under 21 years are, however, incapable of registration, and if for less than 40 years application for registration is optional only.

Dispositions on the register.

Once the title to a legal estate in land has been placed upon the register it is the policy of the Act to prohibit dealings with the title off the register except where specially permitted to meet cases in which experience has shown unregistered dealings to be necessary or desirable.

Forms 19–44 of the Schedule of the Rules are by L. R. R. 74 to be used in the case of the transfers to which they respectively refer or are capable of being applied or adapted, with such alterations and additions, if any, as are necessary or desired and the Registrar allows. L. R. R. 75 provides that where there is no form issued by the Registry, or where the form issued cannot be conveniently adapted, the instrument shall be in such form as the Registrar allows but following the scheduled form as closely as possible. The provisions of the L. P. Act, 1925, as to the execution of conveyances on sale apply to the execution of transfers on sale of registered land: L. R. Act, 1925, s. 38 (1); and the covenants for title and otherwise implied under ss. 76 and 77 of the L. P. Act, 1925, are by L. R. R. 76, 77, permitted to be implied in registered dispositions by transferring as beneficial owner or as the case may be, but no reference to covenants implied under s. 76 must appear on the register. Such covenants for title are subject to the charges and other interests appearing in the register and to any overriding interests of which the purchaser has notice and subject to which they would have taken effect if the land had not been registered. Where it is desired to imply the covenants contained in s. 77, *i.e.* on transfers of land subject to rents, that section or the parts of the Second Schedule of

the L. P. Act in which the covenants are set out must be expressly referred to: L. R. R. 77 (4). The provisions of this Rule are in addition to the provisions relating to covenants contained in the L. P. Act, and it will not be necessary to have recourse to that Act in the case of dispositions of leaseholds: see L. R. Act, 1925, s. 24. The Registrar may decline to register an instrument or entry upon any of the grounds mentioned in L. R. R. 78. If the instrument is executed by attorney, the power of attorney or an office copy thereof, must be produced to the Registrar, and unless the power also relates to unregistered land or an unregistered charge the original power of attorney or an office copy thereof must be filed at the Land Registry: L. R. R. 82. Neither the Registrar nor any person dealing with a registered estate or charge is affected with notice of a trust express or implied or constructive, and so far as possible references to trusts are excluded from the register: s. 74.

On delivery of an instrument for registration notice will be sent by the Registrar by post to the registered proprietor, and if the instrument purports to be exercising a power of sale implied either in a mortgage prior to registration or in a registered charge, to the proprietor of the land and the proprietors of all subsequent charges: L. R. R. 89.

Transfers of registered estates are completed by the entry on the register of the transferee as proprietor of the estate transferred and until such entry the transferor remains proprietor of the registered estate: ss. 19 (1), 22 (1).

Effect of disposition on the register.

Freeholds.

The effect of registration of a disposition of freeholds, including a lease thereof, for valuable consideration is to confer on the transferee or grantee, when registered, a legal estate in fee simple or for a term of years absolute or other legal estate expressed to be created in the land dealt with with all rights, privileges, and appurtenances, including (subject to any entry to the contrary on the register) the appropriate rights and interests which would under the L. P. Act, 1925, have been applicable thereto if the land had not been registered, but subject to the incumbrances and other entries appearing on the register and, unless the contrary is expressed on the register, to the overriding interests (see definition in s. 3 (xvi)), if any, affecting the estate transferred or created but free from all other estates and interests whatsoever including those of the Crown: s. 20. The same section makes the disposition operate, subject to any entry to the contrary on the register, as if the registered transferor or grantor were entitled to the registered land in fee simple in possession for his own benefit. A disposition not made for valuable consideration has the like effect, save that the transferee or grantee is subject to any minor interests affecting the estate of the transferor or grantor: s. 20 (4).

Leaseholds.

The effect of registration of a disposition of leaseholds, including a sub-demise thereof, for valuable consideration is to vest in the transferee or grantee, when registered, the eatate transferred or created to the extent of the registered estate as for the term created by the sub-demise with all implied or expressed rights, privileges and appurtenances attached to the estate transferred or created including (subject to any entry to the contrary on the register) the appropriate rights and interests which would under the L. P. Act, 1925, have been transferred if the land had not been registered, but subject (i) to all implied and express covenants, obligations, and liabilities incident to the estate transferred or created, (ii) to the incumbrances and other entries appearing on the register, and (iii) unless the contrary is expressed on the register to the overriding interests, if

any, affecting the estate transferred or created, but free from all other estates and interests whatsoever including those of the Crown: s. 23. The transfer or sub-demise operates as if the registered transferor or sub-lessor were, subject to any entry to the contrary on the register, absolutely entitled to the registered lease for his own benefit.

A disposition not made for valuable consideration is subject to minor interests as in the case of freeholds: s. 23 (5).

Disposition into settlement.

When land either already registered or not is to be transferred into settlement, see s. 86 (4), and L. R. R. 99–102.

Registered disposition may not be accompanied by assurance off the register.

In order to ensure that dealings with registered land shall only take place on the register, s. 39 (1) provides that where transactions relating exclusively to registered land or a registered charge are capable of being effected and are effected by registered dispositions any instruments executed by the proprietor, other than the registered dispositions, for the purpose of giving effect to the transaction shall be void so far as the transaction is carried out by registered disposition.

Exceptions.

Subsection (2) of the same section allows the Registrar to make special exceptions from the above provision and L. R. R. 96 permits dispositions off the register in cases where it is necessary or useful that a registered disposition should be accompanied by one that is not registered. The instances cited in this rule are where there are lengthy recitals, or personal covenants not affecting the substance of the transaction in relation to the registered land or charge, or of its being closely involved with other transactions or of its being necessary that duplicates should be held by different persons. In these cases the Registrar may issue a certificate that an additional deed is necessary or useful and, such deed, if in accordance with the certificate, shall not be void.

Effect of assurances of registered land off the register.

The result of creating or transferring legal estates on registered land by unregistered assurance, save in the excepted cases below mentioned, is laid down by s. 101, which overrules the decision in *Capital & Counties Bank* v. *Rhodes*, [1903] 1 Ch. 631.

Exceptions to rule that unregistered assurance cannot grant legal estates.

An exception to the rule that unregistered assurances do not create or transfer legal estates will be found in s. 106 as regards mortgages, but not when accompanied by a registered charge as well: see Vol. II., p. 276; and an exception to the rule that a lease of registered land must be created by the registered proprietor will be found in s. 104 relating to leases under powers conferred by the L. P. Act, 1925, or the S. L. Act, 1925, or any other statute which may be granted in the name of the registered proprietor by the donee of the power who is not himself on the register. Subject to the express provisions relating to leases and mortgages above mentioned a disposition or dealing must be effected under and in the manner required by the other parts of the Act, and when so required must be registered or protected as required by the Act or the Rules: s. 109.

By section 101 any person, whether the registered proprietor or not, who has a sufficient interest or power in or over registered land may dispose of or deal with the same by the same modes and for the same interests as would be applicable thereto if the land were not registered, but such interests and rights take effect as minor interests only. The expression "minor interests" is defined in s. 3 (xv) and consist, generally speaking, of equities capable of being overridden by trustees for sale under the L. P. Act, 1925, or by a tenant for life under the S. L. Act, 1925.

Minor interests.

These minor interests are incapable of being registered, s. 2, but may be protected by caution or inhibition under L. R. R. 229. The registered

proprietor is by s. 103 bound to give effect on the register to certain minor interests.

Legal estate deemed to be in registered proprietor.

The legal estate in fee simple in the case of registered freeholds, and the legal term created by the registered lease in the case of leaseholds is deemed by s. 69 (1) to be vested in the registered proprietor whether he was registered before or after the L. R. Act, 1925, came into force, but subject to overriding interests and any mortgage having priority over the registered estate. By sub-s. (2) of the same section any legal estate or term left outstanding at the date of first registration, whenever effected, or disposed of or created under s. 49 of the L. T. Act, 1875, which becomes satisfied or which a proprietor of the land may require to be vested in or surrendered to him, after cancellation of any entry on the register protecting the same, vests without any conveyance in the registered proprietor. When a person is registered as first proprietor of land in a compulsory district after 1925, any legal estate intended to be created in favour of a purchaser or lessee which failed to take effect by reason of the omission of such purchaser or lessee to register is vested in the first registered proprietor, but subject to any mortgages having priority thereto: s. 69 (3). The estate for the time being vested in the registered proprietor can only be disposed of or dealt with by him in manner authorised by the Act: s. 69 (4).

Getting in of outstanding legal estates.

Acquisition of title by possession.

The Limitation Acts apply to registered land as if it were unregistered. The title of the registered proprietor is not extinguished, but he is deemed to be a trustee for the person who has acquired the title: s. 75.

Land formerly held in undivided shares.

Where the entirety of land held in undivided shares under the old law was registered and the persons entitled to the undivided shares were registered as proprietors the Registrar on the first dealing affecting the title after 1925, will rectify the register by entering as proprietors the persons in whom the entirety has vested under the L. P. Act, 1925: L. R. Act, 1925, s. 78 (1). As to the evidence to be furnished to the Registrar in this case, see L R. R. 248. Where the title to an undivided share was placed upon the register but the entirety is unregistered the Registrar may remove the title from the register, but the persons in whom the legal estate in the entirety has vested under the L. P. Act, 1925, or the persons entitled to more than an undivided half may, before the 1st January, 1927, apply for registration, without being charged a fee, as the persons in whom the legal estate has become vested. As soon as the title to the entirety is registered the title to the undivided shares will be closed: s. 78 (2); if the entirety has become vested in the Public Trustee he will not be registered until he has accepted the trust: s. 78 (3).

Land formerly copyhold and manorial incidents.

Land formerly copyhold but enfranchised under the L. P. Act, 1922, whether subject or not to manorial incidents, comes within the definition of "land" in s. 3 (viii) and must be registered as if it had always been freehold when a dealing on sale comes to be made. The manorial incidents may be protected by notice on the register: s. 51.

Power of registered proprietor to impose restrictive covenants.

Subject to any entry to the contrary on the register and without prejudice to the rights of persons entitled to overriding interests and to incumbrances, a registered proprietor may impose restrictive covenants by any registered disposition or other instrument upon the registered land or any part thereof, and may waive and release any restrictions so imposed: s. 40. The transfer should be made in form 43 of the Schedule of the Rules and a certified copy thereof lodged therewith: L. R. R. 135, 212.

Removal

Inspection of the register may show cautions, restrictions, notices, or

inhibitions. If a caution exists the better plan is for the vendor to obtain an application for the cancellation of the caution under L. R. R. 222 and hand it to the purchaser on completion. If the transfer is left for registration without an application for cancellation the Registrar serves notice on the cautioner under s. 55, warning him that the caution will cease to have any effect, unless an order to the contrary is made by the Registrar. Any restriction may be withdrawn under s. 58 (4). The transfer will be subject to all estates, rights, and claims protected by notice on the register: s. 52. An inhibition must be discharged or cancelled by an order of the Court or by the Registrar: L. R. R. 231. *of cautions, notices, restrictions, etc.*

As to the jurisdiction of the Court to order rectification of the register, see s. 82: *Stephenson* v. *Yorke*, [1900] 1 Ch. 505. *Rectification of register.*

All registered land is, except where otherwise expressly provided by the Act, subject to the overriding interests, themselves incapable of registration, set out in s. 70. The expression "overriding interests" is defined in s. 3 (xvi). Enquiries should therefore be made concerning these interests as if the land were not registered. Local land charges under s. 15 of the L. C. Act, 1925, are by s. 70 (1) (i) of the L. R. Act, 1925, included in the list of overriding interests until registered under L. R. R. 155. Where the vendor is registered with a possessory or qualified title the title to the intended exception from first registration must be examined and the same searches made in respect of such excepted interests as if the land were not registered. *Searches off the register.*

A person authorised to inspect entries on the register may have an official search made against a title charge or incumbrance and a certificate of the result issued: L. R. R. 292. *Official search on the register.*

As to stamping instruments for carrying out transactions on the register, see L. R. R. 94, 95; and as to the fees payable, see the Land Registration Fees Order, 1925, S. R. & O. 1925, No. 1122/L32. *Stamps and fees.*

RECITALS.

1. Whas the sd A. is registered under the L. R. Act, 1925, as proptor with a —— title of the land hby granted under the heading District ——, Title No. ——, Property ——, subjt to the restrictions *or* "inhibitions" following (that is to say):— *Registration as proprietor of land.*

2. Whas the sd A. is registered under the L. R. Act, 1925, as proptor of a [first] charge for £—— bearing intt at the rate of £—— p.c. p.a. on the land registered under the heading, &c. *Registration as proprietor of charge.*

3. Whas by an instrumt of charge dated, &c., & registered under the L. R. Act, 1925, the sd A. charged the ppty registered under the heading District, &c. (being the ppty hby grted) [assned] with the paymt to the sd B. of the ppal sum of £—— with intt thron at the rate & on the day thrin mentd. *Registered charge (a).*

(a) As to the consolidation of registered charges, see L. R. R. 154.

Notice of lease (*b*).

4. Whas a notice of the sd lease was on the —— day of —— entered against the land registered under the heading District, &c.

Registration as proprietor of lease (*c*).

5. Whas the sd A. was on the —— day of —— registered as proptor with a —— title of the leasehd land comprised in the sd lease under the heading District, &c.

Mortgage by deposit of Land Certificate.

6. Whas in conson of the sum of £—— pd to the sd A. by the sd B. the sd A. on the —— day of —— deposited the Land Certfe of the land registered under the sd title with the sd B. for the ppose of securg the repaymt of the sd sum of £—— with intt to the sd B., his exs, ads, or assns.

Discharge of incumbrances (*d*).

7. Whas a note of the cessation of the sd *incumbce* was entered on the Register on the —— day of ——.

Entry of restriction (*e*).

8. Whas a restriction has been entered against the sd title that except under an order of the Registrar no transfer of the land is to be registered witht, &c.

Annexation of conditions (*f*).

9. Whas the condons specified in the schdle hto were on the —— day of —— registered as annexed to the sd land.

Preparation of transfer.

10. Whas in psuance of an agrmt entered into on the treaty for the sale a pper instrumt of transfer of the ppty hby conveyed capable of registron under the sd Acts bearing even date with & to be forthwith handed to the sd B. has been prepared whereby it is intended that the sd A. shl transfer the sd ppty to the sd B., & this deed has been certified (*g*) by the Registrar to be proper & necy for carrying out the sd sale.

Application to withdraw restrictions.

11. Whas the sd A. *add any other persons interested in the restrictions,* have duly applied to the Registrar to withdraw all the restrictions entered against the sd title.

PARCELS, COVENANTS, &c.

Parcels.

1. All the land registered under the L. R. Act, 1925, under the heading District ——, Title No. ——, Property ——.

Covenant to apply for entry of restric-

2. The sd A. hby covts with the sd B. forthwith to apply to the Registrar for entry under L. R. Act, 1925, of notice

(*b*) See L. R. Act, 1925, s. 48; L. R. R. 186.
(*c*) See L. R. Act, 1925, ss. 8 to 12; L. R. R. 44–49.
(*d*) See L. R. Act, 1925, s. 35; L. R. R. 151.
(*e*) See L. R. R. 235, 236, and forms 75, 76, 77 in Schedule.
(*f*) See the L. R. Act, 1925, ss. 40, 50.
(*g*) See *ante*, p. 693.

against the land comprised in the sd title of the easemts hby grted, *or* "the restrictive covts & condons contained in the schdle hto." tive covenants on the register (*a*).

3. THE sd, *vendor*, hby covts with the sd, *pchaser*, that he will immedly after the execution of this deed execute & deliver to the sd, *pchaser*, a pper instrumt of transfer already prepared & intended to be executed immedly after this deed of the ppty hrinbfe described & hby grted to the sd, *pchaser*, & will hand to him the land certfe throf [& the sd certfe of charge]; *Where only part of the land comprised in the title is to be conveyed, say,* "and will deposit or procure to be deposited at the Land Registry the land certfe & all necessary certfes of incumbce & charge in order to enable the sd transfer to be registered" [& will produce the probate of the sd will of —— at the Land Registry to enable the sd, *pchaser*, to be registered as proptor of the sd ppty] [& also will hand to the sd, *pchaser*, an applicon wch has been already prepared & signed by all pties for the withdrawal of the sd restrictions] & also will do every act, matter, or thing to enable the sd, *pchaser*, to be registered under the sd Acts as proptor of the sd ppty. And the sd, *vendor*, hby irrevocably appts W. of, &c., X. of, &c., & Y. of, &c., *the pchaser's solors*, & every two or more of them & each of them severally the attys & atty of the sd, *vendor*, in his name & on his behalf to make all applicons & do every such act & thing as last afsd. Covenant in conveyance as to transfer, &c.

4. PROVD ALWAYS & it is hby declared that the covts wch are implied by reason of the sd A. hby granting, *or as the case may be*, & being expressed to grt, as benefl owner, shl extend to any liabilities, rights, & intts wch by section 70 of the L. R. Act, 1925, are declared not to be incumbces within the meaning of the Act. Provision as to liability of transferor under implied covenants

5. The covts implied by s. 77 (1) (*A.*), *or as the case may be*, of the L. P. Act, 1925, are incorporated herewith & shl apply accordingly. Implied covenants to transfer of land subject to a rent (*b*).

(*a*) As to restrictive conditions, see *ante*, pp. 361 *et seq.*

(*b*) See L. R. R. 77 (4), and *ante*, p. 691, preliminary note. The covenants implied by incorporating the provisions of s. 77 of the L. P. Act, 1925, are in addition to the covenants implied on a disposition of a lease under s. 24 of the L. R. Act, 1925: L. R. R. 77 (3). In the case of dispositions of leases the covenants implied under the former Act are set out more fully in Parts IX. and X. of the Second Schedule of that Act than in s. 24 of the

PRECEDENTS.

I.

CONVEYANCE *of* LAND *in a* COMPULSORY DISTRICT, PART *of which is* REGISTERED (*c*).

Recitals. *PARTIES*, A., *vendor*, 1; B., *pchaser*, 2. *Recite title of A.*, p. 462, f. **1**; *Registron of A. as proprietor of land*, "secondly hrinar described & hby granted," p. 695, f. **1**, *Agrmt for sale*, p. 471, f. **1**.

Witnesseth. NOW THIS DEED WITNESSETH, &c., *continue convce* as at p. 529; *acknowledgmt, &c.*, p. 515, f. **1**, *Covenant as to transfer, &c.*, p. 697, f. **3**. [*Statement as to value*, p. 525.] IN WITNESS, &c.

II.

INSTRUMENT *of* TRANSFER *of* LAND (*d*). VARIATIONS *for* TRANSFER BEFORE FIRST REGISTRATION, *and for* LEASEHOLDS (*e*).

LAND REGISTRY.

Land Registration Act, 1925.

District ——.
Title No. ——.
Property ——.

L. R. Act, 1925, but do not appear to afford any greater protection to either party than is afforded by those implied under the last-mentioned section. References to the L. P. Act will, however, be necessary where registered land is disposed of subject to a rent-charge, in which case no covenants are implied under the L. R. Act.

(*c*) The usual method of effecting this transaction will be by conveyance of the unregistered land and a separate transfer of the registered land. The legal estate in the latter will not pass until the purchaser is registered as proprietor, and for this a transfer is necessary.

(*d*) The reader is referred to the schedule to the L. R. R. for forms under the register, and to the valuable work of Messrs. Brickdale & Stewart-Wallace for variations of the forms. In this place only a few forms have been inserted.

Unless the Land Certificate is deposited at the registry it must be produced on the application to register the transfer: L. R. Act, 1925,

(*e*) As to the covenants implied on the transfer of registered leaseholds, see L. R. Act, 1925, s. 24; L. R. R. 115, 117.

Date. In conson of —— pounds (£——) I, A, (*a*), of ——, hby transfer to B. of ——; (*b*) the land comprised in the title above referred to *for a transfer of part of the land, say* "shown & edged with red on the accompanying plan & known as —— [& described in the schdle hto] being pt of the land comprised in the title above referred to," *for leasehds, add* "for the residue of the term grted by the registered lease" *for a transfer before first registron, say,* "the land grted, *or as the case may be,* by a deed dated, &c." [*Statement as to value* (*c*), p. 525.] *Signature of A. and seal. Attestation by witness* (*d*).

[*Add Schdles, if any.*]

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s. 64 (1). Where some consent is required by statute to a conveyance it will not be safe to take a registered transfer without the prescribed consent though it may possibly be argued that if the statute requring the consent is prior to the L. T. Act, 1875, re-enacted by the L. R. Act, 1925, it is *pro tanto* repealed. Where there are several title numbers, the district and number of each should be stated. The addition of a receipt clause is desirable. If there are stipulations it will be desirable to define the vendor and purchaser as "vendor" and "pchaser" respectively. Unless the vendor is registered with absolute title: L. R. Act, 1925, ss. 5, 20 (1); he ought to convey "as benefl owner," so as to imply covenants for title, &c.

(*a*) This is form 19 of the L. R. R. schedule. The words "as benefl owner" are not included, though it would appear better that they should be as it might be necessary to enforce the covenant for further assurance. See the next form and L. R. R. 76.

(*b*) The words "in fee simple" should be added where dealings take place prior to first registration under s. 123 (2). Once the transferor is on the register they are unnecessary: s. 20.

(*c*) This statement need not be inserted where the transfer is made merely to give effect to an unregistered assurance which contains the statement.

(*d*) A transfer must be executed as a deed by the transferor, and attested, L. R. Act, 1925, s. 38 (1). If there is a reservation the transferee need not execute (L. P. Act, 1925, s. 65) the transfer, as it will operate as a re-grant to A. without such execution. As to execution by attorney, see L. R. R. 82.

III.

INSTRUMENT *of* TRANSFER *of* LAND *with various permitted* ADDITIONS.

Heading as in Precedent II., p. 698.

Date. I, A., of, &c. In conson of —— pounds (£——) [pd by —— to me], *receipt*, p. 478, as benefl owner, *or as the case may be*, hby transfer to B., of —— [subjt to the leases & tenancies specified in the first schdle hto] the land comprised in the title above referred to [subjt to the reservons & exceptions specified in the first schdle hto, & with the benefit of the easements & rights specified in the second schdle hto & subjt to & with the benefit of the restrictive condons specified in the third schdle hto] [subjt to the leases mentd in the charges register] : [AND the sd A. & B. hby apply to the Registrar to enter on the register such of the sd reservons, exceptions, easemts, rights, & restrictive condons as are capable of registron & hby apply for provisional registron of the sd B. for the period of —— days ; *or*, AND the sd A. with the consent of the sd B. hby applies to the Registrar to enter the sd easemts (*d*) & rights as appurtenant to the land hby transferred. And the sd B. with the consent of the sd A. hby applies to the Registrar to enter the sd reservons (*e*) & exceptions of the land comprised in the sd title & still vested in the sd A.] *If so required, add, Statement as to value* (*f*), p. 525 ; *Provision as to liability of transferor under his implied covts*, p. 697, f. **4.**

[*The Schdles.*]

(*e*) Of course no application need be made in case of reservations already entered.

(*f*) See *ante*, p. 699, note (*a*).

IV.

INSTRUMENT *of* TRANSFER *to a* CORPORATION *or* COMPANY (*a*).

Heading as in Precedent II., p. 698.

Date. Pursuant to a licence (*describing it as* " under the —— Act "), I, A. (*b*), of, &c., hby transfer to *fill in the corporate names of the transferee,* all the land comprised in the title above referred to: AND it is hby declared [that the land already held by the transferee[s] under such licence [Act] togr with the land hby transferred, does not exceed —— acres *or* " that no land (other than the land hby transferred) is held by the transferee[s] & "] that the psnt transfer is for the pposes of *fill in the purposes for which the land is to be used.*

V.

INSTRUMENT *of* TRANSFER *to a* PUBLIC BODY *acting under* STATUTORY POWERS.

Heading as in Precedent II., p. 698.

Date. In psuance of the —— Act —— I, A., hby transfer to ——, *the public body,* all the land shown & edged with red on the accompanyg plan & known as —— & described in the schdle hto (being pt of the land comprised in the title above referred to) for the ppose of —— *naming the public purpose intended,* subjt to the followg restriction: No disposition shl be registered unless it be in accordance with the —— Act[s] witht an order of the Registrar. *See Prec. II.,* p. 759.

The Schdle above referred to.

(*a*) See L. R. R. 121, and Sched., form 35.
(*b*) See note (*a*), p. 699.

VI.

INSTRUMENT *of* TRANSFER *of* PART *of the* LAND *comprised in a* TITLE GRANTING *or* RESERVING *an* EASEMENT.

Heading as in Precedent II., p. 698.

Date. In conson of —— pounds (£——) I, A., of ——, being owner in fee simple of the land comprised in the sd title for my own benefit hereby transfer to B., of ——, the land shown & edged red on the accompanying plan being part of the land comprised in the title above referred to. Togr with [*or* reserving to myself] the right of, *here describe the easement*, and I, the sd B. [A.], with the consent of the sd A. [B.], hby apply for an entry of the sd right of ——, as appurtenant to the land hby transferred *or* "to the land comprised in the sd title & retained by the sd A." *See Prec. II.*, p. 698.

VII.

INSTRUMENT *of* TRANSFER *of part of registered* LEASEHOLD LAND (*whole or part*) (*a*).

Heading as in Precedent II., p. 698.

Date. IN conson of £—— I, A., of, &c., hby transfer to B., of, &c., the land shown & edged with red on the accompanyg plan, & described in the schdle hto [being pt of the land comprised in the title above referred to] for the residue of the term grted by the registered lease. [*Add* f. **5** *on* p. 697, *saying*, "s. 77 (1) (D)" (*b*) *if desired.*

(*a*) See L. R. R. 109 and 115, Sched., form 32.
(*b*) This should be executed in duplicate.

VIII.

INSTRUMENT *of* TRANSFER *on* SUB-SALE (*c*).

Heading as in Precedent II., p. 698.

Date. Follow Prec. III., p. 761, *saying: Where the origl pchaser has sold prior to complon,* " in conson of —— pounds (£——) of wch £—— is pd to A., of, &c., *origl vendor,* & of £—— pd to B., of, &c., *origl pchaser,* I, A., at the request of the sd B. hby transfer to D., of, &c." *If the original transfer comprises part only of the land comprised in a title, & the sub-purchase comprises all the land in the original purchase,* say, " the land transferred by an instrumt of transfer, dated —— from A., of, &c., *original vendor,* to B., of, &c.," *original pchaser. If the sub-purchase comprises part only of the land in the original transfer, say,* " the land edged red on the accompanyg plan, being pt of the land comprised in the title above referred to." *See Prec. II.*, p. 698.

IX.

INSTRUMENT *of* TRANSFER *of a* LOT *on an* ESTATE *laid out for* BUILDING, *pursuant to a* FILED BUILDING SCHEME (*d*).

Heading as in Precedent II., p. 698.

Date. In conson of —— pounds (£——), I, A., of, &c.; **[as benefl owner]** hby transfer to B., of, &c., the land shown, &c., being lot No. —— shown in the bldg scheme, No. ——, dated &c. & filed in the Registry, subjt to the exceptions & reservons specified in the first schdle to the sd scheme, & with the benefit of the easemts specified in the second schdle thereto,

(*c*) If the transfer to the original purchaser has been executed, but not registered, the original purchaser can transfer without being registered: L. R. Act, 1925, s. 37 (1); L. R. R. 81. If the original purchase comprises the whole of the land comprised in a title the sub-transfer will be in the same form as if the original purchase had been registered.

(*d*) See the form of scheme, *ante*, p. 358; and see also *ante*, p. 694.

& also subjt to & with the benefit of the covts & condons specified in the third schdle to the sd scheme, so far as they resply relate to the sd lot (*e*), and the sd A. & B. hby apply &c. *as in Prec. III.*, p. 700. *See Prec. II.*, p. 698.

X.

INSTRUMENT *of* TRANSFER *of a* PLOT *of* LAND *comprised in a* BUILDING SCHEME (*f*).

Heading as in Precedent II., p. 698.

I, A., of ——, [as benefl owner,] in conson of —— pounds (£——), hby transfer to B., of ——, in fee simple, the land shown & edged red on the accompanyg plan (being pt of the ppty comprised in the title above referred to) togr with the messe standing thron known as No. ——, —— Street, subjt to the reservons & exceptions & subjt to & with the benefit of the easemts, rights, covts & condons subjt to & with the benefit of wch the same ought to be held owing to the same forming pt of & being lot —— of a bldg este offered for sale by the [predecessor in title of the] sd A., in accordance with a scheme affecting the same & other land edged green on the sd plan, the stipulons & condons of wch scheme are specified in the schdle hto.

Application to enter notice of

And the sd A. & B. apply to the Registrar to enter a proper notice of the sd scheme on the register with respt to the land hby transferred, *Unless notice of the scheme has been entered*

Dispensing with unregistered assurance.

(*e*) If the transfer in the form given in the text is executed in duplicate and one part handed to the vendor, an unregistered assurance may be dispensed with. The entries on the register on the purchase of a lot will be somewhat as follows: Add to the description of the lot, "The land is subjt to the exceptions & reservons specified in the first schdle to the bldg scheme, dated ——, & filed in the Registry, & has the benefit of the easemts specified in the second schdle to the sd bldg scheme, & is subjt to & has the benefit of the restrictive condons specified in the third schdle to the sd scheme so far as they resply relate to the land comprised in this title."

(*f*) See L. R. R. Sched., form 43.

up against the vendor's land, add, "& against the land retained by the vendor." building scheme.

And the pchaser hby covts with the vendor, for the benefit of the remainder of the land comprised in the above title number , & also separately with each pson who is now the owner of any pt of the sd land to observe & pform the stipulons contained in such scheme so far as the same ought to be observed & pformed by the owner of the land hby transferred.

And the vendor hby covts with the pchaser, to observe & pform the stipulons contained in such scheme so far as they ought to be observed & pformed by the owner or owners of the land retained by the vendor as afsd.

The Schdle above referred to.

In this schdle the vendor means [the above-mentioned predecessor in title of] the sd A. *Add stipulons & conditions.*

XI.

INSTRUMENT *of* TRANSFER *of a* PLOT *of* LAND *on a* BUILDING ESTATE NOT *subject to a* BUILDING SCHEME.

Heading as in Precedent II., p. 698.

IN conson of —— pounds (£——) I, A., of ——, [as benefl owner] hby transfer to B., of ——, in fee simple the land shown & edged red on the accompanyg plan (being pt of the ppty comprised in the title above referred to) togr with the messe standing thron known as No. ——, —— Street, wch (togr with the land shown & edged green (*b*) on the sd plan & other land) is known as the —— Este & was recently offered for sale in lots by the [predecessor in title of] the sd A. subjt to the stipulons contained in the first schdle hto under condons negativing any genl scheme for bldg in respt throf.

And the sd B. covts with the vendor for the benefit of the land coloured green on the sd plan to observe & pform the covts specified in the first schdle hto.

Schdle.

(*b*) The land coloured green is what is left of the estate and is the land to which the covenant will be annexed.

XII.

INSTRUMENT *of* TRANSFER *of* LAND *purchased with* CAPITAL MONEY *arising under a* SETTLEMENT *to* TENANT FOR LIFE (*a*). *Variations where transfer is to trustees of the Settlement as* STATUTORY OWNERS, *the tenant for life being an infant.*

Heading as in Precedent II., p. 698.

Date. In conson of —— pounds (£——), paid by C. D. & E. F. (*trustees of the Settlement*) out of capital money arising under a trust deed dated, &c., & made betwn, &c. I, A., of, &c. (*vendor*) hby transfer to B., of, &c. (*tenant for life*), in fee simple, the land comprised in the title above referred to; & I, the sd B., hby declare as follows:—

(*a*) The land is vested in me upon the trusts from time to time affecting it by virtue of the sd trust deed.

(*b*) The sd C. D. & E. F. are trustees of the settlement.

(*c*) The following powers relating to land was expressly confined by the sd trust deed in extension of those conferred by the S. L. Act, 1925 (*fill in the powers, if any*).

(*d*) I have the power to appoint new trustees of the settlmt (*or as the case may be*).

(*a*) See L. R. R. Sched., Form 24.

The registration of settled land is dealt with by s. 86 of the L. R. Act, 1925. Under that section, settled land must be registered in the name of the tenant for life or other statutory owner. The expression "tenant for life" is to have the same meaning as in the S. L. Act, 1925; which includes a person (not being a statutory owner) having the powers of a tenant for life under that Act. But by s. 86 (5) of the L. R. Act, 1925, references in that Act to the "tenant for life" will, where the context so admits, be read as referring to the tenant for life, statutory owner, or personal representative who is entitled to be registered.

If the purchase is by the trustees of the settlement as statutory owners, where the tenant for life is a minor, substitute C. D. and E. F. for B., and alter the declaration as follows: "(*a*) The land is vested in the said C. D. and E. F. as statutory owners, the tenant for life being B., of, &c., a minor who was born on the (*date*)"; (*b*) and (*c*) as above; "(*d*) the said C. D. and E. F. during the minority of the said B., are the persons to appoint new trustees of the settlement. And we apply for the entry on the register of the following restriction: Except under an order of the Registrar no disposition under which capital money arises or which is not authorised by the S. L. Act, 1925, is to be registered." See L. R. R. Sched., form 10.

And I hby apply for the entry on the register of the followg restrictions, *see form* 9 *of L. R. R., Schdle* (*b*). *To be executed by A. & B. See Prc. II.*, p. 698.

XIII.

INSTRUMENT *of* Transfer *of* Leaseholds Purchased *with* Capital Moneys *arising under a* Settlement (*c*).

Heading as in Precedent II., p. 698.

Date. In conson of —— pounds (£——), paid by C. D. & E. F. (*trustees of the settlmt*) out of capital money arising under a trust deed dated, &c., & made betwn, &c., I, A., of, &c. (*vendor*), hby transfer to B., of, &c. (*tenant for life*), the land comprised in the title above referred to for the residue of the term grted by the registered lease, and I, the sd B., declare as follows (*continue as in last precedent*). And I, the sd B., hby apply for an entry on the register of the followg restrictions, *form* 9, in *L. R. R. Schdle. To be executed by A. & B.. See Prec. II.*, p. 698.

XIV.

INSTRUMENT *of* Transfer *of a* Small Holding *by a* County Council.

Heading as in Precedent II., p. 698.

Date. In conson of —— pounds (£——) the County Council of —— hby transfer to (*name*) of (*address and description*) the land [shown & edged with red on the accompanying plan being pt of the land] comprised in the title above referred to subject

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(*b*) Under s. 86 (3) of the L. R. Act, 1925, there must be entered on the register such restrictions as may be prescribed, or may be expedient for the protection of the rights of the persons beneficially interested in the land. Under L. R. R. 104 it is the duty of the proprietor or (if there is no proprietor) the personal representatives of a deceased proprietor to apply to the Registrar for the entry of such restrictions or inhibitions or notices as may be appropriate to the case.

(*c*) Form 27 in the schedule to the L. R. R. is not applicable to leaseholds purchased under a settlement.

to the conditions of s. 12 of the Small Holdings & Allotment Act, 1908, & except & reserved all minerals vested in the Council (*unless the Ministry of Agriculture & Fisheries have otherwise directed; see Land Settlement (Facilities) Act*, 1919 (9 & 10 *Geo.* 5, *c.* 59), *s.* 11 (1)). *To be sealed by the Council* (*a*).

XV.

VARIOUS APPLICATIONS *which may be made to the* REGISTRAR *in particular cases noted in the margin, the proper heading being used in each case. The application to be signed by the applicant* (*b*).

Heading as in Precedent II., p. 698.

Provisional registration

Date. [And] we [the sd] A., of, &c., & B., of, &c., hby apply to the Registrar for the provonal registron of the sd B. for the period of —— days (*c*).

Mutual restrictive conditions.

[AND] we [the sd] A., of, &c., & B., of, &c., hby apply to the Registrar to enter on the register the restrictive condons hrinar [above] referred to.

To have land added to title.

I, the sd B., hby apply to the Registrar to have the [sd] land added to the title, No. ——, in the Parish of ——, & District of ——, of wch I am registered as proptor.

To enter restrictions.

[And] I, the sd B., *here add description if necessary*, hby apply to the Registrar to enter the followg restrictions against the title above referred to (that is to say) that, &c. *Signatures.*

(*a*) If a plan is annexed it must be sealed by the council and signed by or on behalf of the purchaser. The form may be varied to suit a sale in consideration of a rent-charge.

When the land is sold free from some only of the conditions of s. 2 of the Small Holdings and Allotments Act, 1908, the following words may be substituted for the reference to those conditions "freed from condition (*b*) (*or as the case may be*) of sub-s. 1 of s. 12 of the Small Holdings and Allotments Act, 1908, but otherwise subject to the condition of that section."

(*b*) In each case the application may be in the body of a transfer.

(*c*) See L. R. R. 36.

XVI.

CONSENT *by a* CAUTIONER *to the* REGISTRATION *of a* TRANSFER.

Heading as in Precedent II., p. 698.

I, A., of ——, *the cautioner,* hby consent to the registron of a transfer of [charge for £—— & intt at the rate of, &c., on] the land comprised in the title above referred to, &c., of ——. *Signature.*

XVII.

CONSENT *by person in favour of whom a restriction is entered to* REGISTRATION *of a new* PROPRIETOR.

Heading as in Precedent II., p. 698.

I, A., of ——, *the person named in the restriction,* hby consent to the registron of B., of, &c., as proptor of [a charge for £—— & intt, at the rate, &c., on——] the land comprised in the title above referred to. *Signature.*

COVENANTS, FORMAL PARTS OF

PRELIMINARY NOTE.

Persons for whose benefit a covenant may enure.

A PERSON who was not in existence or not ascertainable at the date of the execution of a deed and who was not, therefore, a possible party to it, cannot in any case take advantage of a covenant contained therein (*Kelsey* v. *Dodd*, 52 L. J. Ch. at p. 39) otherwise than as an assign of the covenant: (see *E. S. Rly. Co.* v. *Associated Portland Cement, Ltd.*, [1910] 1 Ch. 12), or as successor in title to the property to which the covenant relates (see L. P. Act, 1925, s. 56, replacing with amendments s. 5 of the R. P. Act, 1845, and *ante*, p. 438, note.

Covenants relating to land distinguished from personal covenants.

Covenants which are incident to the ownership of property, and are intended to operate *in rem*, sometimes in relation to land called real covenants and in sections 78 and 79 of the L. P. Act, 1925, referred to as covenants relating to land, must be distinguished from purely personal covenants which operate *in personam* only.

An affirmative covenant relating to land which ceases to operate *in rem* after the covenantor has parted with the property (see *ante*, p. 521) operates thenceforward *in personam*; and every covenant so operating binds the real as well as the personal estate of the covenantor unless a contrary intention is expressed: L. P. Act, 1925, s. 80; but this is a matter which concerns the administration of estates and does not affect the question whether or not the burden or benefit of the covenant runs with the land.

Frame of covenants.

A covenant whether real or personal may and should invariably now be framed without mention of the representatives or successors of either party in the formal part of the covenant: see L. P. Act, 1925, ss. 78, 79.

Land intended to be bound or benefited must be clearly indicated.

In framing real covenants it is essential to indicate precisely the property for the benefit and protection of which the covenant is entered into; and where, as in the case of covenants restrictive of the user of land, the burden of the covenant is intended to devolve as an encumbrance upon the land of the covenantor, to indicate precisely the land to be burdened with the covenant.

Explanation of former practice of naming "heirs and assigns" of covenantee.

It was the former practice to frame a covenant intended to run with the land as a covenant with the covenantee his heirs and assigns, adding if the identity of the land which it was intended to benefit did not otherwise appear in the body of the covenant the words "owner or owners of" the defined land, thus limiting the class of heirs and assigns for whose benefit the covenant was intended to enure after the death of the covenantee to heirs and assigns of the defined land. "Heirs and assigns" were mentioned, therefore, not as descriptive of covenantees not parties to the deed, but as words of limitation to show the nature and extent of the interest intended to be acquired under the covenant. Except for this purpose the naming of "heirs" (see *Lougher* v. *Williams*), 2 Lev. 92, and Conv. Act, 1881, s. 58), and "assigns" (Co. Litt. 385*a*) was always unnecessary and is now meaningless for any purpose.

Present practice.

A separate covenant with the heirs and assigns of A, a living person, or

with the future owners of Whiteacre was and still is a void covenant. The safest course, therefore, is to take advantage of the provisions of section 78 of the L. P. Act, 1925, and to omit from the formal part of the covenant all reference to successors and assigns. If the identity of the property to be affected would not otherwise appear the proper method, and that to which countenance is given by s. 80 (sub-s. 3) of the L. P. Act, 1925, is to preface the covenant with words explanatory of the intention as in Form 3, *infra*.

Covenant by covenantor "for himself and his assigns" —object of.

The recognised method of showing that the burden of a covenant was to run with the land either at law, as between lessor and lessee, or in equity, in the case of a restrictive covenant, was to frame the covenant as a covenant of the covenantor for "himself and his assigns." In neither case apparently was the mention of assigns essential for this purpose (see as regards covenants between lessor and lessee *Re Stevens*, [1915] 1 Ch. 802; and as regards restrictive covenants *Re Fawcett & Holmes*, 42 Ch. D. 150); and now by s. 79 of the L. P. Act, 1925, the covenantor, unless a contrary intention is expressed, is to be deemed in the case of a covenant relating to land to covenant on behalf of himself, his successors in title and the persons deriving title under him or them.

Implied in covenants relating to land.

Meaning of "successors in title" in L. P. Act, 1925, ss. 78 and 79.

In connection with covenants restrictive of the user of land, the expression "successors in title" is to be deemed to include, in section 78 of the Act, the owners and occupiers for the time being of the land of the covenantee intended to be benefited; and in section 79 of the Act the owners and occupiers for the time being of the land of the covenantor intended to be bound.

See further as to the law as regards the burden and benefit of affirmative and negative covenants relating to land, *ante*, pp. 354 *et seq.*, and *post*, *sub tit.* "LEASES" (HOUSES).

As to covenants for title, see *ante*, pp. 507 *et seq.*

Effect of covenant by a person with himself and others.

A covenant by A with himself and any other person or persons is enforceable in like manner as if it had been entered into with such other person or persons alone: L. P. Act, s. 82, overruling *Boyce* v. *Edbrooke*, [1903] 1 Ch. 836; *Ellis* v. *Kerr*, [1910] 1 Ch. 529; *Napier* v. *Williams*, [1911] 1 Ch. 361. The section applies to covenants entered into either before or after the commencement of the Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons.

Effect of covenant with several.

A covenant made after 1881 with two or more persons jointly whether express or implied by virtue of the L. P. Act, 1925, is to be construed as having been made with each of them unless a contrary intention appears: L. P. Act, s. 81.

As to what amounts to a joint, and what to a several covenant, and as to the principal upon which a covenant entered into with more than one person was formerly construed: see *White* v. *Tyndall*, 13 A. C. 263; *Read* v. *Price*, [1909] 1 K. B. 577; 2 K. B. 724; see also Platt on Covenants, p. 117; Norton on Deeds, 512.

As to the framing of a covenant where it is intended that the covenantor shall become personally responsible for the acts or defaults of his assigns, see *Re Watts*, 22 Ch. D. 5; *Powell* v. *Hemsley*, [1909] 1 Ch. 680; S. C. on appeal, [1909] 2 Ch. 252, and *ante*, p. 2.

As to covenants by partners, see *ante*, pp. 15, 16, and *post*, p. 712.

Personal covenant (*a*).

1. The sd A. hby covts with the sd B. to (*b*) *or* "that he [or his assns, *or* "successors in business," *or as the case may be* (*c*)], will, &c.

Restrictive covenant to be annexed to land of the covenantee.

2. The sd A. " to the intent & so as to bind (so far as practicable) the lands & premes hby assured into whosoever hands the same may come, & to benefit and protect, *the protected property*, [but not so as to render the sd, *covenanter*, psnlly liable in damages for any breach of covt committed after he shl have parted with all intt in the premes in respt of wch such breach shl occur (*d*)] hby covts with the sd B that, &c.

Covenant by two

3. The sd A. & B. hby covt & each of them hby covts separately *or*, "do hby jointly & each of them doth separately

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Joint covenants.

(*a*) The mere substitution of the plural for the singular in a covenant by more than one person constitutes a joint covenant; but a covenant with several implies a separate covenant with each of them. See *ante*, p. 2.

Covenant "as trustees."

As to the effect of inserting in a covenant by trustees the words "as trustees" after the names of the covenantors, see per Buckley, L.J., in *Re Robinson*, [1912] 1 Ch. at p. 728; but see and cf. *Watling* v. *Lewis*, [1911] 1 Ch. 414.

Proviso limiting personal liability.

The general rule is that personal liability under a covenant may be limited but cannot be altogether extinguished by way of proviso: *Furnival* v. *Coombes*, 5 Man. & Gr. 736; *Williams* v. *Hathaway*, 6 Ch. D. 544; *Watling* v. *Lewis*, *sup.*; *Re Tewkesbury Gas Co.*, [1911] 2 Ch. 279.

(*b*) Where several covenants follow each other, they may run on as one sentence, each covenant being introduced with the words "and also," or by the words "first," "secondly," &c., or may be set out in paragraph form. It will be found necessary where the covenantor is to become personally responsible for the acts or defaults of his assigns or other persons and, in the generality of cases, more convenient to introduce each covenant by the word "that" rather than "to."

Married women.

It is not necessary for a married woman expressly to bind her separate estate: see M. W. P. Act, 1893, s. 1. As to the words "otherwise than as agent" in that section, see *ante*, p. 606, note.

Covenants by partners.

(*c*) See *ante*, p. 15, note (*b*); *Re Watts*, 22 Ch. D. 5; *Powell* v. *Hemsley*, [1909] 1 Ch. 680; S. C. on appeal [1909] 2 Ch. 252. Where the covenant is by partners relating to matters arising in the ordinary course of their business, they may covenant either in their own names or in the firm name (the latter for choice) "that they or their successors in business will, &c.," the expression "successors in business" being defined as in Precedent XI., *ante*, p. 46. Where the object of the covenant is to secure the repayment of money advanced to the firm, and in other cases where a joint and several liability is intended, the same form may be adopted with the additional words from f. 4, *infra*, importing a several as well as a joint liability. In such cases the partners will usually covenant in their own names: see *ante*, p. 15, note (*b*); and Prec. VI., *ante*, p. 28.

(*d*) The words in this bracket will be added where it is wished to limit the personal liability of the covenantor. See *Williams* v. *Hathaway*, 6 Ch. D. 544, and *ante*, p. 358, note (*b*).

covt," *or*, "hby jointly & severally covt" with the sd C., that, &c. jointly and severally.

4. The sd A., B., C. & D., & every three & two of them hby covt & every one of them hby covts separately, *or as in either of the alternative forms given above*, with the sd E., that, &c. The same by more than two.

5. Each of them, the sd A., B. & C., hby so far as relates to the acts & defaults of himself his exors or admors (*e*) *or* "himself & the prsns claimg under him," only and not further or orwise, covts with the sd D., that, &c. Separate covenants by each of several for his own acts only.

6. The sd A. hby covts with the sd B. & C., that, &c. (*f*). Covenant with two jointly and severally.

7. The sd A., hby so far as the covts, agrmts, & provons hrinar contained are or ought to be pformed or observed by him & psons claimg under him, covts with the sd B. & C. (*f*), & the sd B. & C. do hby, jointly & severally, so far as the covts, agrmts, & provons hrinar contained are or ought to be pformed or observed by them & prsons claimg under them resply, covt with the sd A. in mner followg (that is to say) :— Mutual covenants by two sets of parties

8. Each and every of them the sd pties hto of the first, second, & third pts hby, so far, &c., *as above*, covts with the other pties hto, & the sd pties hto of the fourth pt hby, jointly & severally, so far, &c., covt with the other pties hto in mner followg (that is to say) :— Limitation of personal liability. The same by more than two sets of parties.

9. It is hby mutually covted & agrd by & betn the sd sevl pties hto, as follows :— The same.

10. The sd —— Co hby covt with the sd —— Co. Short form.

11. The sd A., B., & C. do hby jointly & severally covt with the sd D., that they the sd A., B., & C., or some or one of them, will on or bfe the —— day of —— pay to the sd D. the sum of £—— witht intt in the meantime *or* "with intt thron in the meantime from the date of these psnts at the rate of £—— p.c. p.a." Covenant between two companies. Joint and several covenants by several to pay a sum of money.

(*e*) Compare the forms of agreement, *ante*, p. 1. In negativing the construction of joint liability care must be taken not to render the covenants purely personal to the covenantors during their respective lives.

(*f*) See L. P. Act, 1925, s. 81, and *ante*, p. 2.

DECLARATIONS STATUTORY (*a*).

I.

STATUTORY DECLARATION *by* ATTESTING WITNESS *authenticating the* EXECUTION *of a* POWER OF ATTORNEY *or* DEED *to operate in the* COLONIES *or elsewhere* ABROAD (*b*).

I, L., of, &c., *one of the attesting witnesses,* do solemnly & sincerely declare that I & also M., of, &c., *the other witness,* were psnt togr on the —— day of —— & did see K., of, &c., the constituent named in the power of atty [party of the —— pt to the deed] hrunto annexed, *or,* "now produced & shown to me & marked —— (*c*)" bearg date the —— day of —— & marked with the letter A., duly sign, seal, & as his act & deed

As to statutory declarations.

(*a*) See Statutory Declarations Act, 1835; the Short Titles Act, 1896; and the Interpretation Act, 1889, s. 21, as to the meaning of "Statutory Declaration." A declaration under the Law of Distress Amendment Act, 1908, need not be a statutory declaration: *Rogers & Co.* v. *Martin,* [1911] 1 K. B. 19.

Stamps.

As to the stamp, see Stamp Act, 1891, 1st Schedule, tit. AFFIDAVIT and STATUTORY DECLARATION; amended as to exemption (2) by the Fin. Act, 1907, s. 6; Alpe, 17th ed., 51. As to the stamp where two or more declarants join in one declaration relating to the same transaction, see *Reversionary Interest Society, Ltd.* v. *I. R. Commrs.,* 22 T. L. R. 740.

Land registry.

Statutory Declarations made for the immediate purpose of being filed, read, or used in the Land Registry are not chargeable with Inland Revenue Stamp duty, L. R. R. 316.

As to the admissibility of a statutory declaration made in the colonies, see Practice Note, *Re Hardwick,* [1907] W. N. 180, Annual Practice, 1922, p. 661; 123 L. T. Journal, 322.

(*b*) See *ante,* p. 215, note (*b*).

(*c*) As to the memorandum of identity of exhibit to be made by the person taking the declaration, see Daniel's Ch. F., 6th ed., 15, making any necessary change of title where the exhibit is annexed to a declaration and not to an affidavit.

deliver the sd power of atty [deed], & that the name or signature K. set & subscribed to the sd power of atty [deed] as the name of the party executg the same is of the pper handwritg of the sd K., & that the name or signature L. set & subscribed to the sd power of atty [deed] as the name of one of the witnesses attestg the execution throf by the sd K. is the name or signature of me the declarant, & that the name or signature M. set & subscribed to the same power [deed] as the name of the other witness attestg the execution throf by the sd K. is of the pper handwritg of the sd M. And I make this declaron conscientiously believg the same to be true, & by virtue of the provons of the Statutory Declarons Act, 1835.

Declared at the City, *or*, " in the Borough " of ——, this —— day of ——, bfe me [& I certify the same under my hand & the seal of office of mayoralty of the same city, *or*, " Borough " (*a*)] X., Mayor of ——, *or* " Notary Public."

II.

VERIFICATION *by a* Mayor *or* Notary Public *of* Declaration *of* Attesting Witness (*b*).

TO ALL TO WHOM THESE PSNTS SHL COME, I, X., Mayor of the City, or, " Borough " of ——, *or*, " Notary Public by Royal Authority duly admitted & sworn, of ——, in the county of ——," in psuance of the Statutory Declarons Act, 1835, do hby certify that on the day of the date hrof psonally came & appeared bfe me L., the pson named in the declaron hrunto annexed, being a pson well known & of good credit, & by declaron wch the sd L. then made bfe me, did solemnly & sincerely declare & testify to be true the sevl matters & things mentd & contained in the sd annexed declaron.

(*a*) The form in this bracket is stated to be sometimes used so as to render the verification in Precedent II. unnecessary. This verification is made under the Statutory Declarations Act, 1835, ss. 15, 16. It is desirable if any matter is required to be proved in the colonies, relating to any debt or account or to any property there situate, to apply to the Colonial Agent of the colony or to the Colonial Office, to ascertain how it should be proved; see 22 & 23 Vict. c. 12, and the Statute Law Revision Act, 1892.

(*b*) As to the stamp, see Alpe, 17th ed., 201.

In faith & testimony whrof I, the sd Mayor, *or*, " Notary Public " have caused the seal of office of mayoralty of the City, *or*, " Borough " of —— [my notarial seal of office], to be hrunto put, & to be affixed to the power of atty [deed] mentd in the sd declaron hrunto annexed.

Dated on —— the —— day of ——

X., Mayor of ——, *or*, " Notary Public." (*Seal.*)

III.

VERIFICATION *by a* Notary Public *in a* British Dependency *of* Signature *of* Magistrate *or other* Official *to* Jurat *of* Affidavit.

I, —— Notary Public, by royal authority duly admitted & sworn, residg & practisg in the town of —— in ——, do hby certify & attest that ——, whose name & signature appears set & subscribed to the jurat at the foot of the foregoing affidavit of ——, is the chief magistrate & one of His Majesty's Justices of the Peace in & for the sd town of ——, *or as the case may be,* bfe whom the affidavit was duly sworn. All wch I attest.

——————, Notary Public, In faith & testimony whrof I, the sd Notary, have hrunto set my hand & affixed my notarial seal of office at —— in —— afsd this —— day of ——.

IV.

STATUTORY DECLARATION *for filing with* Power of Attorney (*a*) *at* Central Office *by* TRUSTEE *about to go abroad* (*b*).

I, A., of &c., do solemnly & sincerely declare that I intend to go abroad [on the —— day of ——, 19—] & to remain out

(*a*) For form of Power of Attorney, see *ante*, p. 226.
(*b*) See T. Act, 1925, s. 25 (4), and *ante*, pp. 202, 226.

of the United Kingdom for a period of more than one month from the date hereof [from that date]. And I make, &c., as in Prec. I., p. 714.

Declared at, &c., this —— day of ——
Declarant's signature.
Before me,
Commr for Oaths, or J.P.

V.

STATUTORY DECLARATION *by* DONEE OF POWER *of* ATTORNEY *as to validity of* POWER (*c*).

I, A., of &c., do solemnly & sincerely declare that the Power of Attorney which was executed by X of —— in my favour on the —— day of —— and filed at the Central Office on the —— day of —— a certified copy of which is now produced to me came into operation on the departure of the said A from the United Kingdom on the —— day of —— and has not been revoked by his return. And I make, &c., as in Prec. I., p. 714.

Declared at, &c., this —— day of ——
Declarant's signature.
Before me,
Commr for Oaths, or J.P.

VI.

STATUTORY DECLARATION *as to* IDENTITY *and* POSSESSION *of* PARCELS.

I, A., of, &c., do solemnly & sincerely declare as follows :—

1. I AM —— yrs of age, & have for a period of —— yrs last past resided in the neighbourhood of ——, & have for up-

(*c*) See T. Act, 1925, s. 25 (7). If the declaration is made pursuant to s. 124 (2) of the L. P. Act, 1925, it will be sufficient to say "that I have not received any notice or information of the revocation by death or orwise of the power of attorney which was created," &c., as in the text.

wards of —— yrs past [acted as surveyor & agent to, &] been well acquainted with a freehd este known as ——, situate in the parish of —— afsd, a portion whrof, comprisg sevl closes of land, &c. [delineated on the plan now produced & shown to me marked A., & thrin coloured ——, *or*, " described in the schdle hto "], has been lately contracted to be sold to X., of, &c.

2. I VERILY believe, & have no doubt that the sevl closes of land so contracted to be sold to the sd X. are pt of the lands wch were comprised in, & conveyed to Y., of, &c., by an indre dated, &c., & made, &c., the description in wch indre I have carefully read previously to making this declaron.

3. THE close or parcel of land numbered —— in the plan or tracg hrunto annexed, wch is a true & correct copy of a portion of the map annexed to a certain indre dated, &c., of land in the township of, &c., is the same plot or parcel of land as is described in the schdle to an indre dated, &c., as follows, &c.

4. DURING the time I have known the sd Este as afsd the sd sevl closes of land so contracted to be sold have been the ppty of or have been in the posson of L., M., & N., successively, (namely) of the sd L., from the yr —— to the yr ——, &c. AND such respective psons have, durg such respective periods, as I verily believe [from my knowledge of the ppty & from having acted as receiver of the rents throf, & from an examinon wch I have lately made of the rental books throf & from havg lately gone over the ppty carefully & verified the description contained in the sd schdle & plan], been in the full, free & undisturbed posson & enjoymt or receipt of the rents & profits of such sevl closes of land & premes with the appurts throf. AND I make, &c., *as in Prec. I.*, p. 714.

[The Schdle above referred to.]

Declared at, &c., this —— day of ——

Declarant's signature.

Before me,

Commr for Oaths, or J.P.

VII.

STATUTORY DECLARATION *by* MORTGAGOR *when mortgaging his* REVERSIONARY INTERESTS.

I, A., of, &c., *mtgor*, do solemnly & sincerely declare as follows :—

1. SAVE AND except by the documts specified in the schdle hto I have not sold, mtged, charged, incumbered, settled or orwise dealt with, or agrd, or purported to sell, mtge, charge, incumber, settle, or orwise deal with any of my psnt or future intts in the ppty subjt to the trusts of an indre of settlemt dated, &c., & made, &c. [the will dated, &c., & proved, &c.].

2. No COURT has made any order charging or appointing a receiver of or orwise affecting or purporting to affect any of my afsd psnt or future interests.

3. No PT of the capl [or income] of any ppty now or htofore subjt to the trusts of the sd settlemt [will] has ever been pd to me or advanced or applied for my benefit or advancemt.

4. I AM not indebted in any sum of moy to the trust este, or under any liability to that este nor have I consented or been party or privy to any breach of trust in the execution of the trusts of the sd settlemt [will]. AND I make, &c., *as in Prec. I.*, p. 714.

The Schdle above referred to.

Declared at, &c., this —— day of ——} *Declarant's signature.*

Before me,

Commr for Oaths, or J.P.

VIII.

STATUTORY DECLARATION *as to* PEDIGREE (*a*).

I, L., of, &c., do solemnly & sincerely declare as follows :—

1. I AM —— yrs of age, & am one of the chln of the late A. of ——, by B. his wife formerly K., spinster who, as I have been informed & believe, were married in the parish church of —— on the —— day of ——. The sd A. & B. are the psons of those respective names in the marre certfe produced & shown to me at the time of making this declaron & marked with the letter ——.

2. I HAVE always understood & believed that the sd A. had three chln & no more by the sd B., namely, two sons, named resply D. & E., & one daur, being myself.

3. THE SD D. was, as I have always understood, born at —— in the Kingdom of Italy on the —— day of ——. In the yr 18— he sailed for Australia in the ship —— from Liverpool, since wch time no tidings of him have ever been reced by any of his family, & I verily believe him to be dead, & that he died a bachelor & intestate.

4. I HAVE been informed & believe that the sd E. was born at —— on the —— day of ——. He was married only once, namely, to F., formerly M. spinster, with whom he intermarried on the —— day of —— at the Parish Church of ——, as I know from having been psnt at the marre. The sd E. died on the —— day of ——. He is the pson of that name mentd in the three sevl certfes of baptism, marre & burial, now produced & shown to me, & marked with the letters —, —, & —, resply. The sd F. is still living & resides at ——.

(*a*) As to the desirability of a declaration as to pedigree being made by a member of the family, see Hubback on Succession, pt. 3, chap. 10 ; Taylor on Evidence, 11th ed., pp. 437 *et seq.* As to the value of statutory declarations as to matters of title, see Williams, V. & P., 3rd ed., 128.

As to proof of births, deaths, and marriages by certificate given under the Births and Deaths Registration Acts, 1836 to 1874, see the Act of 1836, s. 38, and the Act of 1874, s. 38. A certificate of birth is evidence of the date of birth: *Re Goodrich*, [1904] P. 138. As to non-parochial registers of births, deaths and marriages, see the Non-Parochial Registers Act, 1840: *Re Woodward*, [1913] 1 Ch 392. As to the law of Scotland, see Registration of Births, &c., Act, 1854, s. 58: *Drew* v. *Drew*, [1912] P. 175.

5. THERE WAS issue of the marre of the sd E. & F. one child only, named G. who was born on the —— day of ——, & died on the —— day of ——, at the age of —— yrs, & witht havg been married. The sd G. is the pson of that name mentd in the certfes of baptism & burial now produced & shown to me, & marked with the letters — & — resply.

6. I KNEW & was well acquainted with H., one of the trees of the settlemt made on the marre of the sd E. & F., who resided & died in the month of ——, at ——. The paper writg now produced & shown to me marked with the letter — is a certfe of his burial.

7. I DEPOSE to the above facts from my own knowledge or family repute. AND I make, &c., *as in Prec. I.*, p. 714.

IX.

STATUTORY DECLARATION *as to* PEDIGREE *and* BONA FIDES *of* APPOINTMENT *and as to* INCUMBRANCES (*a*).

I, A., of, &c. (hrinar called the father), & B., of, &c. (hrinar called the son), do solemnly & sincerely declare as follows :—

And first I, the father, for myself declare :—

1. THAT I have always understood & believe that I was born on the —— day of ——, & that I am the same pson as —— named in the certfe of birth now produced & shown to us & marked "A1."

(*a*) An appointment in fraud of an equitable power made before 1926 was void ; and a purchaser for value without notice but without the legal title could not set up want of notice as a defence against persons claiming under a prior equitable title : *Cloutte* v. *Storey*, [1911] 1 Ch. pp. 18, 31. A limited protection is afforded by s. 157 of the L. P. Act, 1925, to a purchaser of appointed property dealing in good faith with the appointee after the commencement of the Act. The section provides in effect that where property is held in default of appointment, in trust for a class or number of persons of whom the appointee is one, an appointment, to the extent of the appointee's interest in default of appointment shall not be void on the ground of fraud on the power as against a "purchaser in good faith" ; who is defined (sub-s. 2) as a person dealing with an appointee of the age of not less than 25 years for valuable consideration in money or money's worth and without notice of the fraud or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

2. That I have been married once only, namely to ——, on the —— day of ——, & that I and the said —— are the same psons as —— & —— named in the certfe of marriage now produced & shown to us marked "A2."

3. That there has been issue of my sd marre —— children & no more of whom the son is one. The son was born on the —— day of —— & is the same pson as —— named in the certfe of birth now produced & shown to us marked "A3."

4. My sd wife died on the —— day of —— & she is the same pson as —— named in the certfe of death now produced & shown to us marked "A4."

5. That save by the deed poll of apptmt mentd in the schdle hto I have not either jointly with my sd wife during her life, or as survor since her death, exercised or released or purported, or agrd to exercise or release in whole or in pt any power of apptmt in favour of my issue conferred on me by an indre of settlemt dated, &c. (*b*).

6. That I executed the sd deed poll of apptmt in all good faith & sincerity & solely & entirely with the object (so far as the same is in favour of the son) of benefiting the son.

7. Except in so far as it was arranged or contemplated that upon the security of the ppty appted by the sd deed poll the son shd raise moy for his own & sole benefit, I did not execute the sd deed poll either (a) in conson of the son or any other pson or psons whomsoever having done or refrained from doing any act or thing, or (b) in the hope or belief or upon any arrangemt or understanding express or implied with the son or any other pson or psons whomsoever that the son or any other pson or psons whomsoever would do or refrain from doing any act or thing, or (c) with the hope or intention of directly or indirectly effecting or enabling to be effected any other object (*c*).

And next I, the son, for myself say :—

8. That the sd deed poll was not executed on any arrangemt or understanding express or implied betn the father & myself

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(*b*) See *Re Evered*, [1910] 2 Ch. 147; *Re Sugden's Trusts*, [1917] 2 Ch. 92.

(*c*) This covers the case of an arrangement between husband and wife that, in consideration of one of them prosecuting or abandoning divorce proceedings against the other, the appointment to the son should be made.

that I would do or refrain from doing any act or thing of any kind whatsr except in so far as it was arranged or contemplated that on the secy of the ppty appted to me by such apptmt I shd raise moy for my own benefit.

9. The only moys wch I have raised, or now contemplate raising, on my interests under the sd deed poll were & are required & were or will be applied by me for my own benefit, & not in any way for the benefit or assistance directly or indirectly of the father, & that no advantage whatever will accrue to him by his having executed the sd deed poll of apptmt or by my raising moy on my interests under the sd deed poll of apptmt.

10. That I have never assned, settled, mtged, charged or orwise dealt with the interests to wch I am or may become entitled under the sd settlemt or the sd deed poll of apptmt except by a mortgage dated, &c.

11. That I have never been made a bkpt nor had a receiving order made against me nor made any composition with creditors nor had any writ of equitable execution issued against me in respt of my sd interests.

And next, each of us, the father & the son, for ourselves declare:—

12. That neither in contemplon or in conson or in consequence of the execution of the sd deed poll of apptmt has the father reced or is the father about to receive directly or indirectly from or through the son or any other pson or psons whomsoever, any direct or indirect benefit or advantage of any kind whatsr.

13. That we fully understand that the validity of the sd deed poll depends upon the same having been made *bonâ fide* & for the sole & single ppose of benefiting the son & not for the ppose of directly or indirectly carrying out or effecting or enabling to be effected any other object.

14. And we make this declaron for the benefit of ——, who, relying on the absolute accuracy of each & every of the statemts hrinbfe contd, are about to advance to the son the sum of £—— on the secy of his interests under the sd deed poll of apptmt. And we make, &c., *as in Prec. I.*, p. 714.

The Schdle above referred to.

DEEDS, FORMAL PARTS OF (*a*).

Commencement of deed between parties of two parts without recitals.

1. THIS DEED OF CONVEYANCE *or* "EXCHANGE," "MORTGAGE," "CHARGE," "TRANSFER OF MORTGAGE," "LEASE," *or as the case may be, or* THIS VESTING DEED *or* THIS TRUST INSTRUMENT, made the —— day of ——, BETN A. (*b*) of, &c., of the one pt, & B. of &c., & C. of, &c., of the other pt, WITNESSETH that, &c.

The same between parties of several parts with recitals.

2. THIS DEED OF CONVEYANCE *or otherwise as in* f. **1**, *according to the nature of the transaction to be effected,* made, &c., BETN. A., of, &c., of the first pt, B. of, &c., of the second pt, & C. of, &c., & D. of, &c., of the third pt. WHAS, &c. NOW THIS DEED WITNESSETH that, &c. (*c*)

Commencement of deed poll without recitals.

3. THIS DEED OF APPOINTMENT *or as the case may be,* made by me A., of, &c., in psuance, &c., WITNESSETH that in exercise, &c., I the sd A. hereby, &c., *using the first person throughout.*

(*a*) In a modern deed the word indenture is an anachronism. Deeds between parties are not indented at the present day, and deeds of one part are not more aptly described as polled than is an ordinary sheet of note-paper. A deed between parties has the effect of an indenture whether indented or expressed to be an indenture or not: L. P. Act, 1925, s. 56 (2), replacing Real Property Act, 1845, s. 5; and any deed may now be described, at the commencement thereof or otherwise, as a deed simply, or as a conveyance, deed of exchange, vesting deed, trust instrument, settlement, mortgage, charge, transfer of mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected, L. P. Act, 1925, s. 57. The last-mentioned section applies whether the deed is between parties or not. Hence the departure in the above forms from the somewhat archaic form of commencement of a deed poll until recently adopted. A recited deed, whether created after 1925 or not, should be referred to by the description originally given to it.

(*b*) As to the various methods of describing the parties, see Elph. Introd., 7th ed., 63. As to the notarial or other authentication of deeds to be acted on abroad, see Taylor on Evidence, 11th ed., pp. 1065 *et seq.*; and *ante*, p. 215, note (*b*), and DECLARATIONS, STATUTORY, *ante*, pp. 714 *et seq.*

(*c*) It is often convenient to express the operative part of the deed in paragraph form, thus sometimes avoiding separate witnessing parts. In this case the witnessing part will run, "Now this Indre [made in pursuance, &c.], witnesseth as follows:—

4. A DEED OF APPOINTMENT *or as the case may be*, made by A. of, &c., WHAS, &c., NOW THIS DEED WITNESSETH that the sd A., &c., *using the third person throughout.* The same with recitals.

5. KNOW ALL MEN that, &c. Power of attorney.

6. THIS DEED, made, &c., BETN the within-named A. of the one pt, & B. of, &c., of the other pt. Endorsed deed (*d*).

7. THIS DEED, made, &c., BETN A. of, &c., of the first pt, B. of, &c., of the second pt, & C. of, &c., of the third pt, suppl [intended to be read as annexed] to an [indre] deed dated, &c., & made betn, &c., [being a settlemt, &c.] hrinar called the ppal indre, & another [indre] deed dated, &c., & made, &c., [being a mtge, &c.] hrinar called, &c. Commencement of deed supplemental, or to be read as annexed to a prior instrument (*e*).

8. THIS DEED, made, &c., *as in last form*, suppl [intended to be read as annexed] to the sevl [indres], deeds, & instrumts, the parlars & natures whrof, togr with the names or The same where the prior instruments are described in a schedule (*e*).

(*d*) The principal deed will be referred to as the "within written" indenture or deed, or as the case may be, giving to the document referred to its original description. Matters recited in it will be referred to as "within recited," and persons or matters mentioned in it as "within named" or "mentd," the first time they are mentioned. If the reference is to a prior endorsed deed, the word "above" will be substituted for "within." As to endorsed deeds.

(*e*) For recitals making a deed supplemental, &c., see *ante*, p. 95. As to supplemental deeds, see L. P. Act, 1925, s. 58; *ante*, p. 88, note (*a*); Elph. Introd., 7th ed., 68. As to the use of supplemental deeds.

The corresponding enactment of the C. Act, 1881, s. 53, was the means of bringing the plan of making deeds supplemental considerably into use as a means of saving recitals, although it does not of course derive any efficacy from the Act which it would not otherwise possess; and recourse was occasionally had to it before 1882 to save long recitals, where endorsement was impracticable or not convenient. It is often more convenient to make a deed supplemental to than to endorse it upon another instrument, especially where more than one solicitor is employed in the business; but where the new deed has to be approved by other solicitors who are not acquainted with the prior instruments, the form of a supplemental deed is generally inconvenient; and there can be no object in using it unless a material advantage in brevity is thereby attained. It is generally convenient and makes the new deed more intelligible if the nature of the prior instruments is very shortly stated, and a short designation is given to each, as above. As to the mode of referring to matters or persons mentioned in the previous instruments (which in an endorsed deed would be referred to as "within" mentioned, &c., see last note), it is incorrect to say "above" mentioned, &c., unless the new deed is actually physically annexed; the proper way is to say "mentioned, *or*, recited, in the principal deed," &c.

designations by wch the same are hrinar referred to, are specified in the schdle hto.

Testimonium of a deed (*a*).

9. IN WITNESS whrof the sd pties hto have hrunto set their respective hands & seals the day & yr first above written.

The like where a company or corporation is a party (*b*).

10. IN WITNESS whrof the sd ——, *Co or Corporon*, have caused their common seal to be hrunto affixed, & the sd other pties hto have, &c., *as in precedg form*.

The same.

Another form.

11. IN WITNESS whrof the sd pties hto of the first, second, & third pts have hrunto set their respective hands & seals, & the sd ——, *Co or Corporon*, have caused their common seal to be hrunto affixed, the day & yr first above written.

(*a*) Where an individual executes a deed, he must either sign or place his mark upon it. Sealing alone is not sufficient: L. P. Act, 1925, s. 73. As to the execution of deeds before 1926, see Sol. J. 636, 651, 667; and as to execution abroad, see Sol. J. 309. Notwithstanding the dictum in *Formby* v. *Barker*, [1903] 2 Ch. at p. 555, a person who claims under a deed to which he is a party but which he has not executed, is bound at law by all its provisions, Litt. s. 374; *R.* v. *Houghton le Spring*, 2 B. & Ald. 375; *Burnett* v. *Lynch*, 5 B. & C. 589; *Webb* v. *Spicer*, 13 Q. B. 886; and see Vol. 2, *sub tit.* "RELEASES," note to Prec. X. As to what is an escrow, see Elph. Introd., 7th ed., 54; Norton on Deeds, 15; *Foundling Hospital* v. *Crane*, [1911], 2 K. B. 367; and as to the effect of execution for a specific purpose only, see *Re Horsfall*, [1911] 2 Ch. 63.

A clause written below the testimonium, before delivery, is part of the deed: Norton on Deeds, 27.

As to execution by companies and corporations.

(*b*) For the protection of purchasers against possible irregularity in the execution of deeds by companies and corporations, owing to want of compliance with the company's articles of association or with the statute or charter of incorporation, it is provided by s. 74 of the L. P. Act, 1925, that, in favour of a purchaser, a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary, or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and that where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices, the deed shall be deemed to have been executed in accordance with the requirements of the section, and to have taken effect accordingly. But this section (sub-s. 6) does not invalidate any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating its affairs.

As to execution by a parish council, see Local Government Act, 1894, s. 3 (9); and by a parish meeting, s. 19 (6), (11); and as to execution on behalf of the Commissioners of Woods and Forests by a permanent secretary, see Crown Lands Act, 1913.

12. IN WITNESS whrof the sd B. conformably to the statute in this behalf has hereunto set the hand & seal of the above-named A., *estate owner, or if the estate owner is a corporation* " signed the name of the above-named —— *corporation* & set his own seal " (*c*) & the sd other pties, &c., *as in* f. **9**. Testimonium of deed executed in name of estate owner (*d*).

13. IN WITNESS whrof the sd — *corporation* conformably to the statute in this behalf & acting by X. their duly appointed officer for this ppse have hereunto set the hand & seal of the above-named A. *estate owner* & the sd other pties, &c., *as in* f. **9** (*e*). The same by officer of corporation having power to convey.

14. IN WITNESS whrof, K. of, &c., *atty,* by virtue of a power of atty under the hand & seal of the above-named A. dated the —— day of —— has hrunto set the hand & seal of the sd A., *or if the principal is a corporation,* " signed the name of the sd —— *corporation* & set his own seal," & the sd other pties, &c., *as in* f. **9**. Testimonium of deed executed by attorney (*f*).

15. IN WITNESS whrof K. of, &c., as atty for the above-named A. by virtue of a power of atty under the hand & seal of the sd A dated the —— day of —— has hrunto set his hand & seal & the sd other pties, &c., *as in* f. **9**. The same. Alternative form (*f*).

16. IN WITNESS whrof the sd A. [I the sd A., *or,* "we the sd A. & B."] has [have] hrunto set his [my] hand & seal [our respective hands & seals] the —— day of ——. Testimonium of a deed poll.

17. IN WITNESS whrof the sd ——, *Corporon,* have caused their common seal to be hrunto affixed this —— day of ——. The same by a corporation (*g*).

(*c*) See L. P. Act, 1925, s. 74 (3). The name of the Corporation must be signed in the presence of at least one witness.

(*d*) See L. P. Act, 1925, ss. 1 (7), 7 (4), and 8 (1).

(*e*) See L. P. Act, 1925, s. 74 (4).

(*f*) See L. P. Act, 1925, s. 123, which (replacing C. A., 1881, s. 46), enables an attorney to execute a deed in and with his own name and signature and under his own seal. This enactment operates without prejudice to any statutory direction that an instrument is to be executed in the name of an estate owner (sub-s. 2). It is not unusual and not incorrect, where all parties are individuals, for the testimonium to be in the ordinary form. The attorney whose act is in law that of his principal may then sign the name of the principal, adding under the signature, " by power of atty to B. (the atty) ; " or he may sign " B. as atty for A. by power of atty, dated, &c." As to execution by attorney.

(*g*) See note (*b*), *supra.*

The same.

18. GIVEN under the common seal of the sd ——, *Corporon, or,* " our common seal," this —— day of ——.

Short form.

The same where company in liquidation is a party.

19. IN WITNESS whrof the common seal of the Company has been hrunto affixed by the direction of the sd A. & B. as such liquidors as afsd & the other pties, &c., *as in* f. **9**.

Testimonium for various parties to a deed.

20. IN WITNESS whrof such of the sd pties hto as are not corporons or companies have hrunto set their respective hands & seals, & such of the sd pties hto as are corporons or companies have caused their respective common seals to be hrunto affixed, as to the pties hto of the —— pts on the day & yr first above written, & as to the other pties hto on the day of the date of their respective execution of these psnts as appears in the —— column of the schdle hto.

Attestation of a deed.

21. SIGNED, SEALED, & DELIVERED by the within-named (*a*) A., in the presence of

B. of, &c.
C., clerk to Messrs. K. & L., of, &c.,
Solicitors.

Attestation where there are erasures or interlineations (*b*).

22. SIGNED, SEALED, & DELIVERED by the within-named A., the words —— [to —— both inclusive] havg been previously erased in [written on an erasure in] [interlined betn] the tenth & eleventh lines of the first skin, [page] & the words —— havg been previously erased in the third line of the second skin [page], in the presence, &c.

Subsequent attestation where the first has noticed erasures.

23. SIGNED, SEALED, & DELIVERED by the within-named B., the erasures & interlineations noticed in the attestation of the execution by the within-named A., havg been previously made, in the presence, &c.

Attestation of execution by marksman.

24. SIGNED by settg his mark, & sealed & delivered by the within-named A., he being unable to write, in the presence, &c.

Attestation for

25. SIGNED, SEALED, & DELIVERED by the within-named A., the same havg been first read over to him, he being blind [unable to read the same] *or,* " the purport & effect of

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(*a*) For a deed engrossed book-wise, in this and the following forms of attestation clauses, say, " above-named."

(*b*) See Norton on Deeds, 26 *et seq.*

the same havg been previously explained by me to him, & he appeared perfectly to understand the same," in the presence, &c. party blind or illiterate (*c*).

26. SIGNED, SEALED & DELIVERED by the within-named B., *or, if a corporation has power to convey* " by the within-named —— *corporation* acting by X. their duly appointed officer " in the name of the within-named A. *estate owner,* in the presence, &c. Attestation for deed executed in name of estate owner.

27. SIGNED, SEALED, & DELIVERED by K., *atty,* as the atty of the within-named A., in the presence, &c. Attestation for deed executed by attorney.

28. THE COMMON SEAL of the within-named ——, *Co or Corporon,* was affixed to the within-written indre in the presence of us, Attestation for company or corporation.

A. & B., [Directors.]
C. [secretary].

29. SIGNED, SEALED, & DELIVERED by the respective pties whose names are subscribed in the —— column of this schdle in the presence of the respective psons whose names are subscribed in this column opposite to the names of such respective pties. Attestation where some signatures in schedule.

30. SIGNED, &c., by the within-named ——, on the —— day of —— (he havg attained his majority on the —— day of ——), in the presence of, &c. Attestation for infant coming of age (*d*).

31. RECED of the within- [above] named A. the sum of £——, being the conson moy within- [above] expressed to have been pd by him to me. Dated the —— day of ——. Receipt endorsed (*e*).

Witness. Signed
B.

32. IT SHOULD be signed by —— at the seal at the foot, where his initials are written in pencil, & after signing Instructions for executing

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(*c*) As to deeds by blind, deaf, dumb, or illiterate persons, see 2 Byth. & Jarman, 4th ed., 258.

(*d*) It is now a presumption of law, until the contrary is proved, that every person expressed to be a party to a conveyance is of full age.

(*e*) This is now seldom required: see L. P. Act, 1925, s. 67, *ante,* p. 478, note (*a*).

and attesting a deed (*f*).

he shd touch the seal & say, "*I deliver this as my act & deed.*"

The above should take place in the presence of a [two] witness[es] who should sign his [their] name[s], address[es], & profession[s] or business[es] (if any), under the memorandum of attestation written at the end [on the back] of the instrumt, where pointed out in pencil.

(*f*) As to what is a sufficient delivery of a deed, see *Re Seymour*, [1913] 1 Ch. 475.

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